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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	FILE NO. 1:03-CV-2337-ODE
v.	)	
	)	
NORTHSIDE HOSPITAL,	)	
	)	
Defendant.	)	
_____	)	

**NORTHSIDE HOSPITAL'S MOTION FOR SUMMARY JUDGMENT**

Defendant Northside Hospital ("Northside") moves this Court pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rules 7.1 and 56.1 of the Local Rules for the Northern District of Georgia to enter judgment in its favor with regard to all claims asserted in the above-captioned action, and to award Northside its costs and attorneys' fees, stating:

1. This is an employment discrimination case in which Plaintiff (over 40) alleges he was discriminated against on the basis of his age in violation of the Age Discrimination in Employment Act. Plaintiff contends he was denied a promotion based on his age, even though he did not apply for the position in question. He further alleges that he suffered retaliation and was "constructively discharged" when Northside temporarily reassigned him and a

18

co-worker to one of its other facilities and subsequently terminated him for refusing to accept the reassignment.

2. Plaintiff also contends that Northside violated the Fair Labor Standards Act when it eliminated his on-call duties.

3. Northside should be granted summary judgment because Plaintiff cannot show there is a genuine issue as to any material fact concerning Plaintiff's claims that Northside discriminated against him in violation of the Age Discrimination Employment Act or the Fair Labor Standards Act.

4. In support of this Motion, Northside submits the attached exhibits, its Memorandum of Law in Support of Defendant's Motion for Summary Judgment (LR 7.1(A), N.D. Ga), and Statement of Undisputed Facts (LR 56.1(B)(1), N.D. Ga.).

WHEREFORE, Northside requests the Court grant its Motion for Summary Judgment on all issues, dismiss Plaintiff's Complaint in its entirety, grant Northside its reasonable costs and attorneys' fees and such further relief as the Court deems appropriate.

Respectfully submitted, this 23<sup>rd</sup> day of March, 2004.

By: 

Curtis L. Mack

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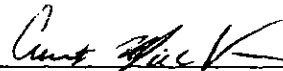
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Plaintiff, ) CIVIL ACTION  
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 )  
NORTHSIDE HOSPITAL, )  
 )  
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\_\_\_\_\_ )

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NORTHSIDE HOSPITAL'S MOTION FOR SUMMARY JUDGMENT** has been served this 23<sup>rd</sup> day of March, 2004 by first-class mail, postage prepaid, upon the following:

Larry A. Pankey, Esq.  
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\_\_\_\_\_  
Curtis L. Mack

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Atlanta, Georgia 30309  
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Burnette  
~~EXHIBIT / ATTACHMENT~~

Depos

(To be scanned in place of tab)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION
vs.	)	
	)	FILE NO. 1:03-CV-2337
NORTHSIDE HOSPITAL,	)	
	)	
Defendant.	)	

- - -

Deposition of DOUGLAS BURNETTE, taken on  
behalf of the Defendant, pursuant to the  
stipulations agreed to herein, before Alice S.  
Davis, Certified Court Reporter and Notary  
Public, at 1170 Peachtree Street, N.E., Suite  
2100, Atlanta, Georgia, on the 3rd day of  
December 2003, commencing at the hour of  
10:15 a.m.

- - -



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1 A If he had a problem, he would come to me.

2 Q Did you have to sign his time card or  
3 anything?

4 A No, ma'am.

5 Q Could you discipline him or anything?

6 A There was no need.

7 Q So it was a company of three or four people?

8 A Yes, ma'am.

9 Q Who did you report to?

10 A Roy Dancey. He was the owner.

11 Q And then there was you and Jeff, the  
12 person --

13 A Yes, ma'am.

14 Q Were there any other employees?

15 A Not that I recall.

16 Q Other than working on, like, decks and  
17 basements, did you do any other type of remodeling?

18 A Light plumbing, light electrical, drywall.

19 Q On residential facilities?

20 A Yes, ma'am.

21 Q Was it all residential?

22 A We did a couple of office buildings.

23 Q Which buildings did you do?

24 A There was one on Windy Hill Road. I don't  
25 remember the name of it.

1 Q And who operated the hospital at that point?

2 A A company by the name of National  
3 Healthcare, Incorporated.

4 Q And that would have been sometime in '88?

5 A That was February of '89.

6 Q What did you do between June of '88 when you  
7 were laid off from Lockheed and February of '89 when  
8 you started with National Healthcare?

9 A I looked for a job.

10 Q You didn't work anywhere?

11 A No, ma'am.

12 Q What was your position with National  
13 Healthcare, Incorporated?

14 A I was hired as a maintenance helper.

15 Q What did you do as a maintenance helper?

16 A All types of maintenance at the facility  
17 inside and out on everything at the facility.

18 Q How many buildings did the facility have?

19 A They had the main hospital, and there were  
20 two or three doctors' offices that we had to keep up.

21 Q Who was your supervisor?

22 A Larry White.

23 Q How many other people worked with you and  
24 Larry White?

25 A Just he and I.



1 Q And how long did you work for National  
2 Healthcare, Incorporated?

3 A Until December of '92 when we were bought  
4 out by Georgia Baptist.

5 Q During the period that you were working with  
6 National Healthcare, Incorporated, did Larry White  
7 remain your supervisor?

8 A Yes, ma'am.

9 Q Was it only the two of you during that  
10 entire time?

11 A Yes, ma'am.

12 Q Did you go for any formal training during  
13 that period?

14 A No, ma'am, not that I recall.

15 Q So all your training would have been on the  
16 job?

17 A Yes, ma'am.

18 Q While employed with National Healthcare, did  
19 your job title ever change?

20 A No, ma'am.

21 Q And you indicated that in December of '92,  
22 National Healthcare was bought out by Georgia Baptist?

23 A Yes, ma'am.

24 Q Did your job title change at that point?

25 A No, ma'am. They had a different title that

1 Q So they brought in a third party?

2 A Yes, ma'am; outside party.

3 Q Between '92 and '99, did you work the same  
4 shift?

5 A Yes, ma'am.

6 Q What shift was that?

7 A 7:00 to 3:30.

8 Q Were you paid on an hourly basis?

9 A Yes, ma'am.

10 Q Between '92 and '99?

11 A Yes, ma'am.

12 Q Were you responsible for recording the time  
13 that you worked?

14 A Recording the time?

15 Q Uh-huh (affirmative); keeping up with the  
16 hours you worked.

17 A No, ma'am. That was done -- First it was  
18 done with a time card, and later on they went to a  
19 badge system. I never saw it.

20 Q With the time card, how did that work?

21 A Just the old-fashioned punching the clock.

22 Q When you'd go in, you would punch in?

23 A Punch the clock, and when you left for the  
24 evening, you would punch out.

25 Q And then you said they went to a badge

1 did they just build another hospital?

2 A No, ma'am. It was a new facility.

3 Q And how far was the old facility from the  
4 new facility?

5 A Five miles.

6 Q Was the new facility larger than the old  
7 facility?

8 A Yes, ma'am.

9 Q How much larger?

10 A I believe I heard three times as large.

11 Q How many buildings did the new facility  
12 have?

13 A There was just the one.

14 Q The main hospital?

15 A Yes.

16 Q Were there doctors' offices?

17 A Yes, ma'am, there was one doctor's office.

18 Q Now at this point in '99 -- I'm sorry. What  
19 part of '99?

20 A April.

21 Q With the move to the new facility, I think I  
22 understood you to say that the size of the staff  
23 changed; correct?

24 A No, ma'am, not right away.

25 Q How long before the maintenance staff

1 A He picked up Larry White's duties.

2 Q Did you begin to report to Mr. Atkinson?

3 A Yes, ma'am.

4 Q Other than yourself, at that point were  
5 there any other people performing maintenance duties?

6 A No, ma'am.

7 Q So did Mr. Atkinson do any maintenance  
8 duties?

9 A He did the office-type work, the paperwork.

10 Q And how long did you continue to work as the  
11 only maintenance person?

12 A From April to September.

13 Q What happened in September?

14 A Georgia Baptist hired a maintenance manager.

15 Q Did they post for the position?

16 A No, ma'am.

17 Q Did they ask you about your interest in the  
18 position?

19 A No, ma'am.

20 Q Who was it that they hired?

21 A Ken Broyles.

22 Q At this point had you gone to any vocational  
23 classes?

24 A No, ma'am.

25 Q Had you gotten any licenses or certificates?

1 A No, ma'am.

2 Q Do you know what Mr. Broyles' background  
3 was?

4 A He was a maintenance manager at a hospital  
5 in Griffin, Georgia.

6 Q Now, I know you said that during the time  
7 Larry White was at the hospital, he was taking after-  
8 hours calls; correct?

9 A Yes, ma'am.

10 Q What happened once Larry White left?

11 A I was on call twenty-four hours a day, seven  
12 days a week.

13 Q I'm sorry?

14 A I was on call twenty-four hours a day, seven  
15 days a week.

16 Q And how long were you on call twenty-four  
17 hours, seven days a week?

18 A From April until January or February of  
19 2000.

20 Q From April of '99 to January 2000?

21 A Yes, ma'am, as I recall.

22 Q What happened when you went out of town?

23 A I didn't go out of town from April until  
24 September.

25 Q But then when the manager was hired on, you

1       went out of town?

2             A       I might have went out of town, yes, ma'am.

3             Q       Once you had to take after-hours calls, how  
4       did you keep up with your time?

5             A       The card reader, the badge kept up.

6             Q       When you were on call, the hospital would  
7       call you when there was a maintenance issue?

8             A       Yes, ma'am.

9             Q       And you would come back to the hospital?

10            A       Yes, ma'am.

11            Q       When you came back to the hospital, did you  
12       always swipe your card?

13            A       Yes, ma'am.

14            Q       Both when you came in and when you left?

15            A       Yes, ma'am.

16            Q       And that card or badge was recording the  
17       number of hours you were actually there working;  
18       correct?

19            A       Yes, ma'am.

20            Q       At that point -- and we're talking April '99  
21       to September of '99 -- were you being compensated on  
22       an hourly basis? Were you being paid on an hourly  
23       basis, an hourly wage?

24            A       For being at the hospital?

25            Q       Right; just your regular work time.

1           A     Yes, ma'am.

2           Q     Do you recall what your regular hourly wage  
3 was in '99?

4           A     It was 11.08 an hour, I believe.

5           Q     What about for the time you would come back  
6 to the hospital?

7           A     I received a two-hour guarantee.

8           Q     What do you mean a two-hour guarantee?

9           A     If you were called back to fix a problem,  
10 you clocked in -- Say if you were there thirty minutes  
11 or you were there an hour, you would clock out at an  
12 hour, and you would receive two hours of pay.

13          Q     Do you know who made that adjustment?

14          A     Georgia Baptist's corporate office.

15          Q     Who explained to you that's how their system  
16 worked?

17          A     The director of nursing was also the  
18 assistant administrator, and when Larry left, she told  
19 me that I would be on call, and that's the way it  
20 worked.

21          Q     Now, was there any time that you were there  
22 on call that you were not compensated for?

23          A     No, ma'am.

24          Q     When the new manager was hired on, Ken  
25 Broyles, what were his duties and responsibilities, if

1 Q How do you spell Bob's last name?

2 A M-u-r-r-e-r-t, I believe. I'm not sure.

3 Q What position was Bob hired for?

4 A I believe he was just a maintenance  
5 assistant.

6 Q The same title that you had?

7 A Yes, ma'am.

8 Q And do you know what his duties were?

9 A Same as mine.

10 Q Which shift did he work?

11 A Same as I did. By this time the shift had  
12 changed from 7:30 to 4:00, I believe. We were coming  
13 in a little later and leaving a little later.

14 Q Who made that decision?

15 A Ken.

16 Q Once Bob was hired, did you continue to be  
17 on call?

18 A Yes, ma'am.

19 Q Was Bob ever on call?

20 A Yes, ma'am.

21 Q Did it rotate?

22 A Yes, ma'am.

23 Q How did you keep up with who was on call?

24 A We wrote it on the calendar.

25 Q And where was the calendar kept?



1           A     There was one kept in the office, and each  
2 department had one.

3           Q     In the office and you're saying each  
4 department?

5           A     Yes, ma'am.

6           Q     Which office are you referring to?

7           A     Our maintenance office, Ken's office.

8           Q     Who made up the calendar?

9           A     I did.

10          Q     You did?

11          A     At Ken's request; yes.

12          Q     So you would put down the days you were  
13 going to be on call?

14          A     Yes, ma'am.

15          Q     And the days Bob would be on call?

16          A     Yes, ma'am.

17          Q     Did Ken have days he would be on call?

18          A     No, ma'am. Ken would not take call.

19          Q     Was this after Bob was hired that Ken  
20 stopped taking calls?

21          A     Ken never took calls.

22          Q     When you said that you were the only person  
23 taking calls April to September and then in September  
24 you got relieved, who was relieving you?

25          A     Ken came in, and I assumed I would take a

1 result?

2 A Yes, ma'am.

3 Q In '99 any idea how much you made in  
4 overtime?

5 A No, ma'am.

6 Q Now, with respect to the call pay, if you  
7 didn't get a call, you didn't get the pay; is that  
8 correct?

9 A No, ma'am.

10 Q How did it work?

11 A Well, they were paying you standby pay to  
12 stay near the hospital. You had to be back within an  
13 hour, I believe it was.

14 Q Standby pay is what you call it?

15 A Yes, ma'am.

16 Q And for the standby pay, what period of time  
17 would it be paid for, how many hours in a night?

18 A Basically fifteen. You worked eight, but  
19 you had your thirty minutes of lunch, so you were  
20 really eight and a half. And then the rest of the  
21 time of the day was fifteen and a half during the week  
22 and twenty-four on the weekend.

23 Q Okay. You have to help me understand that  
24 again. During the week, explain what would happen.

25 A During the week when you left your job --

1 Q At 4 o'clock?

2 A Yes, ma'am. You were on call from that  
3 moment to the moment you got back at 7:30; and they  
4 were paying you, in the beginning it was 3.50 an hour.  
5 Then on weekends you were just 24-hours-a-day standby  
6 pay.

7 Q And was it also 3.50 per hour?

8 A Yes, ma'am.

9 Q So if I'm understanding you, if you left at  
10 4 o'clock, you would start getting standby pay if you  
11 were on the schedule --

12 A Yes, ma'am.

13 Q -- from that point until you came in the  
14 next morning?

15 A Yes, ma'am.

16 Q That's regardless of whether or not you were  
17 called?

18 A Yes, ma'am.

19 Q Now if you received a call and had to come  
20 back to the hospital, what happened then?

21 A You would clock in as a call-back, clock in.  
22 There was a certain code you used, and however long it  
23 would take you -- thirty minutes, hour, two hours,  
24 three or four hours, whatever -- you were paid for  
25 that time. But there was a two-hour guarantee.

1 Q So you get at least two hours of actual pay?

2 A Yes, ma'am.

3 Q And would you be paid at your regular hourly  
4 rate then?

5 A I believe so.

6 Q And was that the case when you first assumed  
7 taking after-hours call?

8 A Yes, ma'am.

9 Q So that had been the arrangement the entire  
10 time you were taking after-hours call?

11 A Yes, ma'am.

12 Q And you were doing the calendar, at least  
13 during the period that Ken Broyles was there, you were  
14 the person responsible for --

15 A Well, there was no calendar up until the  
16 time that Bob came. It was just me.

17 Q And then when Bob came, you started  
18 splitting up the call?

19 A Yes, ma'am.

20 Q Now, you said that when you had call duty,  
21 you had to be back to the hospital at a certain time.

22 A Yes, ma'am.

23 Q What was the time frame?

24 A I believe it was an hour.

25 Q Now, at any point was there a discussion

1 about making some type of assessment about the after-  
2 hours calls so you could determine whether it was  
3 necessary to go back or whether it was something that  
4 could wait until you got back the next morning?

5 A Each call was judged differently.

6 Q What do you mean by judged differently?

7 A If you had a problem in a patient room and  
8 you had ten empty rooms and you had a patient in this  
9 room but you had ten empty rooms and if the patient  
10 was complaining about something in the room, you could  
11 move that patient, and we would take a look at it the  
12 following morning.

13 If you had a problem in the room and you  
14 didn't have any empty rooms and this patient was  
15 raising Cain, so to speak, you would have to go take a  
16 look at it then. I never saw a definition of what you  
17 came in for and what you didn't. That was just a  
18 judgment call.

19 Q Who made the judgment call? Was it the  
20 people at the hospital who were making the call, or  
21 was it the maintenance guys on the other end?

22 A It was Ken.

23 Q So would he be called every time a  
24 maintenance after-hours call went out?

25 A Sometimes they called him. Sometimes they

1       couldn't get him.

2           Q       So if they had called him, would he make the  
3       determination and then call a maintenance person?

4           A       Yes, ma'am. If I had any questions like  
5       they want me to come in and change a light bulb, if  
6       they had called me first and said they have a light  
7       bulb out in the bathroom, he would say: Well, they  
8       can get by with that until the morning, and I will  
9       call them and tell them. There's no reason for us to  
10      come over for that.

11          Q       Bob, do you know what his experience was  
12      prior to coming onboard?

13          A       He was basically a handyman, I believe.

14          Q       Do you know whether he had worked at a  
15      hospital or anything?

16          A       No, ma'am, he had not.

17          Q       Do you know how old he was when he came  
18      onboard?

19          A       He was older than I. He was, I'll say late  
20      fifties, early sixties.

21          Q       Okay. You indicated that Ken left in...?

22          A       I want to say the summer of 2002.

23          Q       Who took Ken's position?

24          A       Northside brought up Larry Castleberry.

25          Q       Did you have any discussions with the

1 administrators at Georgia Baptist about Ken's  
2 position?

3 A No, ma'am.

4 Q Do you know whether they posted it?

5 A No, ma'am.

6 Q Whether Georgia Baptist posted the position?

7 A No, ma'am. It was in a transitional stage  
8 because we were being bought out in October by  
9 Northside. The position wasn't posted, as I recall.

10 Q Did you have any discussion with any  
11 management person there at Georgia Baptist about that  
12 position, Ken's position?

13 A No, ma'am.

14 Q No discussion about whether they were  
15 planning to fill it, who was going to take it, any  
16 discussions such as that?

17 A No, ma'am.

18 Q How did you find out that Larry Castleberry  
19 was being brought up to handle the position?

20 A We were told by Ken the moment that Larry  
21 got there that he was there to assist us in the  
22 transition of the hospital.

23 Q So Ken was still there when Larry came  
24 onboard?

25 A Yes, ma'am. Larry came onboard in May of

1 2002, I believe.

2 Q And he had been working at the main hospital  
3 for Northside Hospital; correct?

4 A Yes, ma'am.

5 Q Do you know whether he requested to be  
6 transferred to that position?

7 A I had heard that he had not.

8 Q That he had not requested it?

9 A Yes, ma'am.

10 Q Had you ever had any discussion with him  
11 about how he ended up at the Cumming facility?

12 A No, ma'am.

13 Q Do you know how long he had worked at the  
14 main hospital?

15 A Twenty-six years.

16 Q Do you know what his job title was when he  
17 was at the main hospital?

18 A No, ma'am. He was -- They had managers, and  
19 they had what they called the chief or something, a  
20 departmental chief or something like that. He was up  
21 at that level.

22 Q A chief?

23 A Something like that, yes, ma'am; supervisor.

24 Q Then you understood that Larry was being  
25 brought in to help with the transition?



1 A Yes, ma'am.

2 Q Did he take on a supervisory role once he  
3 got there?

4 A Yes, ma'am.

5 Q Did he begin to supervise you and Bob?

6 A Bob left before Larry got there. Bob worked  
7 about a year in our department and then went to the  
8 manager position of the housekeeping department.

9 Q So it was a promotion for him?

10 A Yes, ma'am. And then in February of, I  
11 believe it was 2002, Cameron Edwards was hired as  
12 Bob's replacement.

13 Q So when did Bob move into his new position;  
14 do you remember?

15 A He worked with us about a year. I'd say  
16 from January until about December.

17 Q So from January to December of 2000, do you  
18 think?

19 A Yes.

20 Q Now, do you know whether Bob's position was  
21 posted?

22 A I believe it was.

23 Q Do you know who all applied for it?

24 A No, ma'am.

25 Q Did you apply for it?

1 A No, ma'am.

2 Q Did you apply for any positions while you  
3 were with Georgia Baptist other than the one that you  
4 had, the maintenance?

5 A No, ma'am.

6 Q What about with Northside: Did you apply  
7 for any positions with Northside?

8 A No, ma'am.

9 Q So before Larry Castleberry was transferred  
10 from the main hospital to the Cumming facility, Bob  
11 was promoted; correct?

12 A Yes, ma'am.

13 Q And that created a vacancy?

14 A Yes, ma'am.

15 Q And you said Cameron Edwards was hired?

16 A Yes, ma'am.

17 Q When did Cameron come onboard?

18 A I want to say January or February of 2002, I  
19 believe.

20 Q What was Cameron's position?

21 A He was hired in as an HVAC mechanic. That's  
22 what it said on his badge.

23 Q For HVAC?

24 A That's heating and air mechanic.

25 Q Do you know whether he had had any

1 vocational training or anything?

2 A No, ma'am, I don't know.

3 Q You don't know anything about his  
4 experience?

5 A He was a maintenance man with a big  
6 apartment company is all I know.

7 Q When Larry Castleberry came in as the  
8 supervisor of you guys, did he go into the rotation  
9 for call duty?

10 A No, ma'am.

11 Q So when he came in, who was taking the  
12 after-hours calls?

13 A Cameron and myself.

14 Q And were you still doing the schedule?

15 A Yes, ma'am.

16 Q And did you continue to keep the schedule in  
17 the office that Ken Broyles had occupied?

18 A Yes, ma'am.

19 Q Did Larry at some point take over Ken's  
20 duties?

21 A Yes, ma'am.

22 Q When did he do that?

23 A Before Ken left, he was training Larry how  
24 to get on the computer, how to do this, and how to do  
25 that.

1 Q Was Larry doing all of the paperwork that  
2 Ken had done before?

3 A Yes, ma'am.

4 Q What about all the construction in terms of  
5 planning and stuff: Was Larry doing that also?

6 A Yes, ma'am.

7 Q Do you know whether Larry was given Ken's  
8 job title?

9 A It was on the phone directory, and it was on  
10 his badge, I believe; yes.

11 Q You think it was on his badge?

12 A Yes, ma'am.

13 Q Do you know whether his personnel records  
14 reflected that he was now the manager of the  
15 department?

16 A No, ma'am.

17 Q Did he indicate whether anybody had told him  
18 he was being made the manager of the department?

19 A No, ma'am.

20 Q Did he indicate he had gotten a pay increase  
21 for coming from the main campus to Cumming?

22 A No, ma'am.

23 Q Did he indicate whether it was a temporary  
24 placement or a permanent placement?

25 A He said he didn't know.

1 Q What is this?

2 A I believe it's the application that we  
3 filled out when Georgia Baptist bought us out in '92.

4 Q Does the application accurately reflect your  
5 work history?

6 A Seems to, yes, ma'am.

7 Q And in terms of technical education,  
8 licenses, special skills, you don't have anything  
9 listed there; correct?

10 A Yes, ma'am.

11 Q Going back to the front page there, it says  
12 date work begins 12/4/92. Was that about the time  
13 Georgia Baptist took over that facility?

14 A Where do you see that?

15 Q Left-hand corner.

16 A That was the date they took over, yes. I  
17 believe it was, yes.

18 Q And that's your signature?

19 A No, ma'am. Mine is above it, right here.

20 Q Okay. But you completed the application?

21 A Yes, ma'am.

22 Q As best you recall?

23 A Yes, ma'am.

24 Q And you think you completed it around the  
25 time Georgia Baptist took over that facility?

1 A Yes, ma'am

2 Q Who is Carrie O'Kray?

3 A She is the human resources representative at  
4 the hospital.

5 Q Now, did your wife go to Mr. Dunford  
6 complaining about how much time was being spent  
7 between you and Ms. Long at work?

8 A She went to -- She came to me and said that  
9 every time she came back to talk to me, Carolyn Long  
10 was there talking to me or Larry or Cameron. I said:  
11 She is just talking. I said: She has a program she  
12 runs in her computer room, and when she comes out to  
13 the restroom, she always speaks to us.

14 Anita said: I don't care if she talks to  
15 them. I don't want her talking to you.

16 Q Now, where was Anita's work area?

17 A It was close to the maintenance area. It  
18 was in the OR.

19 Q Did she have to come out of a separate  
20 building to get to the maintenance area?

21 A No, ma'am, in the same building.

22 Q So your office and her office are part of  
23 the same building?

24 A Yes, ma'am.

25 Q On the same floor?

1 A I don't believe so.

2 Q And is that your signature on the bottom?

3 A Yes, ma'am.

4 Q And at the meeting, you guys were placed on  
5 notice that if that kind of conduct continued,  
6 disciplinary action would follow; correct?

7 A Yes, ma'am.

8 Q At the time this took place, which is  
9 October 2002 according to your testimony, was just  
10 about the time that Northside Hospital was getting  
11 ready to make its purchase; right?

12 A It was after; yes, ma'am.

13 Q It was after the purchase?

14 A Yes, ma'am.

15 Q When did the purchase take place?

16 A I believe it was October 1st.

17 Q How did you find out that the purchase was  
18 taking place?

19 A We had employee meetings when we were  
20 Baptist. The administrator had employee meetings with  
21 all the employees telling us that we had been bought  
22 out by Northside.

23 Q Who was the administrator?

24 A Lynn Jackson.

25 Q Was any representatives from Northside at

1 those meetings?

2 A Not at that time.

3 Q Soon thereafter were there any meetings  
4 where Northside representatives came in to speak with  
5 you?

6 A Yes, ma'am.

7 Q Did you attend those meetings?

8 A Yes, ma'am.

9 Q What information was covered?

10 A Insurance, things like that, changes in  
11 insurance.

12 Q What about handbook, policies, things like  
13 that?

14 A Yes, ma'am.

15 Q How long did the meeting last as far as you  
16 can recall?

17 A Hour and a half, hour.

18 Q Did they have several meetings for different  
19 groups?

20 A For different topics, yes, ma'am.

21 Q So you would have attended, it sounds like,  
22 a couple meetings that Northside hosted?

23 A Yes, ma'am.

24 Q And this was in close proximity to when the  
25 buyout occurred?



1 A Yes, ma'am.

2 Q Let me switch gears for a moment now. You  
3 worked for Northside through sometime in May of 2003;  
4 correct?

5 A Yes, ma'am.

6 Q Are you currently employed?

7 A No, ma'am.

8 Q How long after being employed with Northside  
9 before you started going out seeking employment?

10 A I was seeking employment in June.

11 Q In June?

12 A I believe, yes, ma'am.

13 Q Who did you seek employment with?

14 A Home Depot, Lowe's, several local companies  
15 in the Forsyth area, Forsyth County school system.

16 Q Home Depot, how many Home Depots did you  
17 apply at?

18 A Two.

19 Q Which two?

20 A One in Cumming and one in Buford, I believe.

21 Q And Lowe's, how many Lowe's did you apply  
22 with?

23 A Just the one there in Cumming.

24 Q Where else have you applied?

25 A Forsyth County school system.

1 she prescribed it, because you were having trouble  
2 calming down. What would cause you to get excited and  
3 need to calm down?

4 A The stress of everyday life, I guess.

5 Q I'm sorry?

6 A The stress of everyday life.

7 Q And you basically have been on it  
8 continuously the last two years?

9 A Maybe a little longer; yes, ma'am.

10 Q Has your dosage ever been adjusted or  
11 whatever?

12 A No, ma'am.

13 Q And other than Dr. Batco, you have not had  
14 any other doctor to prescribe you any medication to  
15 help you calm down?

16 A No, ma'am.

17 Q I think you told me in October 2002  
18 Northside took over the facility at which you were  
19 working; correct?

20 A Yes, ma'am.

21 Q Was Mr. Broyles gone by then?

22 A Yes, ma'am.

23 Q Who was supervising the day-to-day  
24 operations at that point?

25 A Larry Castleberry.

1 Q When Northside took over, was there any  
2 change in your rate of pay?

3 A No, ma'am.

4 Q What about in your work hours?

5 A No, ma'am.

6 (Defendant's Exhibits 5, 6 and 7 were  
7 marked for identification.)

8 BY MS. BIVINS:

9 Q Let me get you to take a look at what we  
10 have marked Defendant's Exhibit 5. Do you recognize  
11 that document?

12 A Yes, ma'am.

13 Q And I take it this was one of the documents  
14 you were given as part of Northside's purchase of the  
15 Georgia Baptist facility that you were working in?

16 A Yes, ma'am.

17 Q It talks about that with the purchase some  
18 positions are changing from exempt to nonexempt. When  
19 you were with Georgia Baptist, were you exempt or  
20 nonexempt. Do you know what that means? You were  
21 receiving an hourly rate of pay; right?

22 A Yes, ma'am.

23 Q When Northside took over, you continued to  
24 receive an hourly rate; correct?

25 A Yes, ma'am.

1 Q Take a look at what's marked Defendant's  
2 Exhibit No. 7. Looking at Defendant's No. 7, is that  
3 your signature on that document?

4 A Yes, ma'am.

5 Q And it says "Statement of Understanding and  
6 Acceptance-Job Duties and Responsibilities". And the  
7 position that's listed on that document is Plant  
8 Stationary Engineer III. Do you see that?

9 A Yes, ma'am.

10 Q That's what your job title was changing to;  
11 correct?

12 A Yes, ma'am.

13 Q Did you understand that your job duties were  
14 going to stay the same?

15 A Yes, ma'am.

16 Q So even though your title before had been  
17 assistant manager, you were going to continue doing  
18 the same kind of duties you had done before; correct?

19 A Yes, ma'am.

20 Q And you said that you had been given that  
21 previous title just so that you would be able to get a  
22 pay increase; correct?

23 A Yes, ma'am.

24 Q Because your duties didn't change?

25 A No, ma'am.

1           Q     Looking back to Defendant's Exhibit No. 6,  
2     on the first side of the page, there's information,  
3     and you have signed at the bottom. On the other side  
4     of the page where they have for employment use only,  
5     do you see where they have FSLA, the box that says  
6     FSLA (exempt/nonexempt)?

7           A     Yes, ma'am.

8           Q     And in that box is NE; correct?

9           A     Yes, ma'am.

10          Q     While you were at the Northside facility  
11     once Northside took over, how long did Mr. Castleberry  
12     continue to function as the acting manager of the  
13     department?

14          A     I believe until Paul was hired.

15          Q     How did you find out Paul was being hired or  
16     had been hired?

17          A     Larry Castleberry told myself and Cameron  
18     Edwards.

19          Q     Did he tell you before Mr. Schempp had  
20     started or after?

21          A     Before.

22          Q     Before?

23          A     Yes, ma'am.

24          Q     Did he tell you how he had found out?

25          A     He said he had called downtown human

1 resources for something, and they told him they had  
2 hired someone for a position up here.

3 Q Do you know whether the position was posted?

4 A It wasn't posted at our facility until after  
5 Paul had been hired.

6 Q Until after he had been hired?

7 A Yes, ma'am.

8 Q Where are the jobs posted at that facility?

9 A At the staff elevator on the ground floor.

10 Q And you know who is responsible for posting  
11 it?

12 A Carrie O'Kray.

13 Q So how soon was it after learning that Paul  
14 had been hired before you saw the posting?

15 A I saw the posting for one day on  
16 February 28th.

17 Q How do you remember it was February 28th?

18 A Because my mother's birthday is the 29th.

19 Q And February 28th, what day of the week was  
20 that, do you know?

21 A I think it was a Friday. And that was two  
22 weeks after we were told by our manager, Larry  
23 Castleberry, that they had hired someone.

24 Q So Larry told you in mid-February, as best  
25 you can remember?

1 position to Larry?

2 A We asked how someone from outside the  
3 facility that didn't work at the hospital would know  
4 about the job and receive the job.

5 Q Did Larry indicate that he had been involved  
6 at all in the hiring of the person?

7 A He indicated that he was surprised to hear  
8 it.

9 Q So if he was surprised to hear it, that's a  
10 good indication he wasn't involved in the selection  
11 decision; correct?

12 A Yes, ma'am.

13 Q After talking to Larry in the middle of  
14 February, did you speak to anybody in HR or anybody in  
15 management about the selection decision?

16 A No, ma'am, not at that time.

17 Q How long after getting this information from  
18 Larry, did you first meet the new manager,  
19 Mr. Schempp?

20 A It was, I believe, the beginning of March.

21 Q Between your finding out about the selection  
22 of the candidate in the middle of February 2003 and  
23 Mr. Schempp starting in March 2003, did you go to  
24 anybody in HR or anybody else in management to discuss  
25 the posting or nonposting of the position?

1 A No, ma'am.

2 Q Do you go to anybody to discuss the filling  
3 of the position at all?

4 A No, ma'am.

5 Q Now, Carrie O'Kray was the HR person  
6 assigned to the Forsyth campus; correct?

7 A Yes, ma'am.

8 Q So you knew who she was; correct?

9 A Yes, ma'am.

10 Q Did you go to her at all to discuss the  
11 position before meeting Mr. Schempp?

12 A No, ma'am.

13 Q Who introduced you to Mr. Schempp?

14 A I don't recall. I believe it was Larry  
15 Castleberry.

16 Q And you believe you met Mr. Schempp the  
17 beginning of March 2003; correct?

18 A First, second week of March, I believe; yes,  
19 ma'am.

20 Q You said you saw the notice posted February  
21 2003; correct?

22 A February 28th. It was posted on a Friday;  
23 yes, ma'am.

24 Q You said it was posted one day?

25 A Yes, ma'am.



1 Q Did you submit an application or resume or  
2 anything?

3 A No, ma'am. At that time we were told Paul  
4 had already been hired.

5 Q Who told you that?

6 A Larry Castleberry.

7 Q So Larry, though, had already told you two  
8 weeks before that he had been hired; correct?

9 A Yes, ma'am.

10 Q So when you saw it posted, Larry had told  
11 you two weeks in advance that somebody had been hired  
12 for the position; correct?

13 A Yes, ma'am.

14 Q Did you go and talk to anybody in HR at that  
15 point to find out why it was posted?

16 A No, ma'am.

17 Q Was there any reason why not?

18 A Paul was already hired. It seemed kind of  
19 redundant. It seemed kind of stupid to me to turn in  
20 an application at that time.

21 Q Other than what Larry told you, had you  
22 sought to verify it with anybody?

23 A No, ma'am.

24 Q And I take it that if Paul was already hired  
25 at that point when the posting went up, not only did

1 you not have a chance to apply, nobody else who was  
2 working with you had a chance to apply; correct?

3 A Yes, ma'am.

4 Q So that would have been true for Cameron as  
5 well as Larry; correct?

6 A Yes, ma'am.

7 Q You wouldn't have been treated any  
8 differently than they were treated in terms of not  
9 being able to apply at that point?

10 A No, ma'am.

11 Q Once Mr. Schempp came onboard, did he have  
12 any meetings with the employees in the maintenance  
13 department?

14 A I don't believe we had any formal meetings  
15 where we had an in-service or anything like that. No.

16 Q I'm sorry?

17 A I don't believe we had any formal meetings  
18 where we had signed saying Paul had showed us  
19 something and we all signed saying we understood it.  
20 I don't believe we had any formal meetings.

21 Q Did you have any discussions with him when  
22 he first got started?

23 A Sure.

24 Q Were there any discussions about what his  
25 expectations were at the facility?

1 A Not that I recall, no.

2 Q Were there any discussions about changes  
3 that were to be made at the facility?

4 A Not until the end of March.

5 Q So as best you can recall, the first changes  
6 that you were told about didn't occur until the end of  
7 March 2003; correct?

8 A Yes, ma'am.

9 Q And by that point you had known by the  
10 middle of February that Mr. Schempp had been hired,  
11 according to Larry?

12 A Yes, ma'am.

13 Q You had seen the posting on the 28th of  
14 February?

15 A Yes, ma'am.

16 Q And you saw Mr. Schempp come in, you said,  
17 right after that; correct?

18 A Yes, ma'am.

19 Q At that point you had not raised any  
20 concerns or complaints at all about Mr. Shempp's  
21 hiring; correct?

22 MR. PANKEY: Object to form.

23 BY MS. BIVINS:

24 Q You had not gone to anybody in management to  
25 complain about Mr. Schempp's hiring?

1 MR. PANKEY: Object to form.

2 A No, ma'am.

3 BY MS. BIVINS:

4 Q And you didn't think the position had been  
5 properly posted?

6 A No, ma'am.

7 MR. PANKEY: Object to form.

8 BY MS. BIVINS:

9 Q What was the first change you can recall  
10 Mr. Schempp implemented or discussing with the staff?

11 A He told Cameron that we were ineligible to  
12 take standby-call pay.

13 Q I know you told me that under Mr. Broyles  
14 and then when Larry came onboard, you were the person  
15 who was doing the calendar for the standby or  
16 after-hours calls; right?

17 A Yes, ma'am.

18 Q When Mr. Schempp came onboard in March of  
19 2003, for that time period, did you continue to do the  
20 calendar?

21 A Yes, ma'am.

22 Q How far in advance would you do the  
23 calendar?

24 A Just for the month we were in.

25 Q So you did it on a monthly basis?

1 A Yes, ma'am.

2 Q And at the end of the month, you would do a  
3 calendar for the next month?

4 A Yes, ma'am.

5 Q You said that Cameron was told that you  
6 would not be eligible for call-back pay; correct?

7 A Yes, ma'am.

8 Q Was Cameron in a meeting with Mr. Schempp  
9 where he learned it?

10 A I don't know. I was off that week with my  
11 surgery.

12 Q So you were not present that week?

13 A No, ma'am.

14 Q And I take it if you were off with your  
15 surgery, you certainty would not have been taking any  
16 after-hours call?

17 A No, ma'am. It was Cameron's week. It went  
18 seven days on and seven days off.

19 Q During the month of March when you were on  
20 call, were you being paid for that period?

21 A Yes, ma'am.

22 Q And when you were called back in, would you  
23 be compensated for that time you were actually working  
24 in March?

25 A Yes, ma'am.

1 Q So you're off for your surgery in late  
2 March, and Cameron advises you that he's learned you  
3 won't be eligible for call pay any longer; correct?

4 A Yes, ma'am.

5 Q Did he tell you how he found out?

6 A He said Paul had told him.

7 Q Now, this all occurred around the end of  
8 March; correct?

9 A Yes, ma'am.

10 Q Did you make a call schedule for April?

11 A No, ma'am, I don't believe so.

12 Q Why not?

13 A At the end of March, Cameron and I had both  
14 been told we were not going to take call, we were  
15 ineligible to take call.

16 Q Now, after Cameron related to you that he  
17 had spoken to Mr. Schempp and Mr. Schempp said that  
18 you and Cameron would no longer be eligible for the  
19 call pay, did you then go and have discussions with  
20 Mr. Schempp yourself about this?

21 A Yes, ma'am.

22 Q Who all was present?

23 A I believe just Paul and I.

24 Q So Mr. Cameron Edwards was not present  
25 during your discussion?

1 Q When was that?

2 A I believe it was in October or November of  
3 2002 when Northside was buying out the hospital. He  
4 was up there with another man, and I was introduced to  
5 him, I believe by Larry Castleberry. And I was  
6 working, and I shook both their hands and went on  
7 about my business.

8 Q Do you know what his role was in the  
9 department?

10 A No, ma'am.

11 Q After that initial meeting with  
12 Mr. Cummings, how many other times did you see him?

13 A Twice.

14 Q After that point?

15 A After the initial meeting, just twice.

16 Q And the two times that you saw him after  
17 that, was it after Mr. Schempp had been hired?

18 A Yes, ma'am.

19 Q Tell me about your one-on-one discussion  
20 with Mr. Schempp about the call pay.

21 A I was out on surgery leave. Cameron called  
22 me to see how I was, told me what he had said.

23 Q What did he tell you he had said?

24 A That Cameron and myself were ineligible to  
25 take call.

1 Q Were ineligible to take call?

2 A Yes, ma'am.

3 Q What did you understand that to mean?

4 A I didn't know what it meant.

5 Q Did Cameron say he asked any questions about  
6 why or what it meant?

7 A Yes.

8 Q What did he say he was told?

9 A He told me that Paul, it was in Paul's pay  
10 when he was hired on, that he would take the call and  
11 he would dictate between Cameron and I who would have  
12 to come in and clock in and do the work.

13 Q Was there any discussion of Mr. Castleberry  
14 and whether he was going to be doing any call?

15 A No, ma'am.

16 Q And this is just what Cameron is relaying to  
17 you; correct?

18 A Yes, ma'am.

19 Q Now, at some point did you have a discussion  
20 with Mr. Schempp yourself about the call-pay issue?

21 A Yes, ma'am.

22 Q Was it in person or over the phone?

23 A Yes, ma'am, it was in person.

24 Q Did you initiate the conversation?

25 A Yes, ma'am.



1 Q Tell me about that discussion.

2 A I came in, and I asked Paul what was going  
3 on with call pay. And he said, well, Cameron and I  
4 were ineligible to take call, that he was going to  
5 take the call and that he would dictate who would have  
6 to come in when he received the call between me and  
7 Cameron. And I believe that I said something about  
8 that doesn't go along with the hospital policy. And I  
9 believe Paul said it came directly from John.

10 Q At that point was there any discussion about  
11 doing up another calendar?

12 A No, ma'am, not that I recall.

13 Q Because prior to this situation, you had  
14 been doing the calendar, putting yourself as being the  
15 call person or putting Cameron as the call person;  
16 correct?

17 A Yes, ma'am.

18 Q You knew that when you were the call person,  
19 you had to stay close to home?

20 A Yes, ma'am.

21 Q But after this point there was no calendar  
22 created; right?

23 A I believe I might have created a calendar  
24 for April, since I was going to be out the last week  
25 of March, for April, because there had been no

1 because we would have to hang around and be on standby  
2 without pay.

3 Q And he told you you would have to be around?

4 A He didn't say I would have to be around. He  
5 said there could be some disciplinary action if when  
6 he got a call if he could not get ahold of Cameron or  
7 myself.

8 Q Was there any discussion about Larry at all?

9 A No, ma'am. That's what confused me. I  
10 didn't understand why all three of us were hourly  
11 employees but only Cameron and I were ineligible.

12 Q So only you and Cameron were ineligible?

13 A Yes, ma'am.

14 Q You found out Larry was going to be eligible  
15 for call pay?

16 A Yes, ma'am.

17 Q Any explanation for why Larry was going to  
18 be eligible for call pay?

19 A Not to this day, no, ma'am.

20 Q Prior to that Larry had not been getting  
21 call pay; correct?

22 A I had heard later he was putting in a week  
23 of call pay every other week.

24 Q Did he tell you that?

25 A No, ma'am.

1 the whole time he was there.

2 Q Other than based on what Cameron told you,  
3 did you have any discussions with Larry?

4 A No, ma'am.

5 Q What about with Mr. Schempp about that  
6 issue?

7 A No, ma'am.

8 Q Did you and Mr. Schempp have any other  
9 discussion about the call-pay issue other than that  
10 one-on-one?

11 A Later we had some discussion about it, I  
12 believe.

13 Q Were they in person or over the phone?

14 A In person.

15 Q Who all was present the next time you and  
16 Mr. Schempp discussed call pay?

17 A I believe just Paul and I.

18 Q Who initiated that meeting?

19 A I don't recall.

20 Q What was said during that meeting?

21 A I believe Paul said that John had backed  
22 down off the call.

23 Q That he had backed down?

24 A That he had backed down off the call.

25 Q What did you understand him to mean that

1 John had backed down?

2 A That he had backed down on telling Cameron  
3 and I that we would have to come in while we were not  
4 receiving standby pay.

5 Q So now you would not receive standby pay,  
6 but you also were not expected to be hanging around?

7 A Yes, ma'am.

8 Q That's correct?

9 A Yes, ma'am.

10 Q And that's what he meant by John had backed  
11 down?

12 A Yes, ma'am.

13 Q How much time passed between your first  
14 discussion with Mr. Schempp and your second  
15 discussion?

16 A I don't recall; a couple weeks.

17 Q A couple weeks, you think. Between those  
18 two meetings, had you spoken to anybody else in  
19 management about the call-pay issue?

20 A After the call-pay issue came up the first  
21 time, Cameron Edwards and myself went to Carrie O'Kray  
22 and spoke out against it.

23 Q When you went to speak to Carrie O'Kray, had  
24 you had any meetings with Mr. Cummings at that point?

25 A No, ma'am.

1 Q Who all was in your meeting with Ms. O'Kray?

2 A Cameron Edwards and myself and Ms. O'Kray.

3 Q Do you recall when that meeting took place?

4 A I want to say the first of April, but I'm  
5 not....

6 Q What was discussed during that meeting?

7 A I told Carrie that I had some issues with  
8 the hospital policy, I felt it wasn't being followed.  
9 And I said it dealt with Paul and it dealt with John  
10 Cummings. I said: I need to know if I'm in the right  
11 place. Do I need to go to Lynn Jackson?

12 She said: No, you're in the right place.

13 Q Which policy did you tell her was not being  
14 followed?

15 A I didn't tell her, I don't believe.

16 Q I'm sorry?

17 A I didn't tell her specifically what policy I  
18 was talking about.

19 Q Did you tell her the nature of your concern  
20 other than just about a hospital policy?

21 A No, ma'am, I don't believe I did.

22 Q What did she tell you other than that you  
23 were in the right place?

24 A That she would call downtown and someone  
25 from downtown would come up and speak to us about it,

1 that they might want us to fill out a complaint form,  
2 and that she would let me know something.

3 Q At that point had you seen a copy of the  
4 call-pay policy?

5 A Yes, ma'am.

6 Q How had you gotten a copy of it?

7 A It's in the employee handbook.

8 Q It was Northside's call-pay policy; right?

9 A Yes, ma'am.

10 Q And that handbook also had the grievance  
11 process in it as well; correct?

12 A Yes, ma'am.

13 Q But you were able to at least get to that  
14 policy from the handbook; correct?

15 A Yes, ma'am.

16 Q Do you need to take a break?

17 A No. I'm fine.

18 Q After your meeting with Ms. O'Kray, who is  
19 the next person in Northside management or HR that you  
20 met with about the call-pay issue?

21 A Carrie called me and said they wanted us to  
22 fill out a complaint form. She called it a grievance  
23 form, and then I think she changed it to a complaint  
24 form. She said they wanted that first, and she would  
25 send it downtown. And the next person that came up

1 was Sarah Cummings.

2 Q With respect to Carrie, did you, either  
3 during that first meeting or the second discussion  
4 with her, ever go into the details about your  
5 concerns?

6 A I don't remember.

7 (Defendant's Exhibit 8 was marked for  
8 identification.)

9 BY MS. BIVINS:

10 Q Let me ask you to take a look at what we  
11 have marked as Defendant's Exhibit No. 8, and you can  
12 tell me whether you recognize the document.

13 Have you seen Defendant's Exhibit No. 8  
14 before?

15 A Yes, ma'am.

16 Q Is that a copy of the grievance or complaint  
17 form you were making reference to?

18 A Yes, ma'am.

19 Q Is that your handwriting?

20 A Yes, ma'am.

21 Q You filled out the form?

22 A Yes, ma'am. It's my signature.

23 Q But did you write in the information?

24 A My wife wrote it. I wrote it down, and she  
25 copied it. My handwriting is not that good.

1           Q     You wrote it down, and your wife copied it  
2 onto the form for you?

3           A     Yes, ma'am.

4           Q     After she copied it, did you read and sign  
5 it?

6           A     Yes, ma'am.

7           Q     It looks like you have it dated April 16th.

8           A     Yes, ma'am.

9           Q     And the two things that you're complaining  
10 about on April 16th are the hiring of the plant-  
11 operations coordinator; correct?

12          A     Yes, ma'am.

13          Q     And according to your testimony, you had  
14 known as early as the middle of February, you had been  
15 told that somebody had been hired for the position;  
16 correct?

17          A     Yes, ma'am.

18          Q     And the second thing you talk about is the  
19 standby-call-pay issue; correct?

20          A     Yes, ma'am.

21          Q     And it was that issue that prompted you to  
22 go in and see Carrie; correct?

23          A     Yes, ma'am.

24          Q     When you did the grievance, you listed both  
25 things, the hiring as well as the call pay; correct?



1 A Yes, ma'am.

2 Q In Number 3, when it asked to describe the  
3 incident in detail, you say: The threat of  
4 disciplinary action was made to Cameron Edwards but  
5 was regarding Cameron and myself on Tuesday, April  
6 1st.

7 A Yes, ma'am.

8 Q I take it at the time you filled out this  
9 form on the 16th, Mr. Schempp had not threatened you  
10 with any disciplinary action; correct?

11 A He had before that. We had had the  
12 discussion before this.

13 Q Right. But according to the form that you  
14 filled out -- And you say you told your wife what to  
15 put in there; right?

16 A Yes, ma'am.

17 Q -- you've got that the threat was actually  
18 made to Cameron but it applied to you as well?

19 A Yes, ma'am.

20 Q In terms of the hospital rules, there on  
21 Number 2 -- I'm sorry -- on page 2, in Number 4, you  
22 talk about the hospital's hiring policy was violated,  
23 and you also talk about the other practice that was  
24 violated: We were instructed we were no longer on  
25 call because we were not eligible for standby pay due

1 Ms. O'Kray, did you have any further discussions with  
2 anybody in Northside management or in HR about the  
3 issues raised in your grievance?

4 A Sarah Cummings.

5 Q And with respect to Ms. Cummings, did you  
6 meet with her before or after your meeting with  
7 Mr. Cummings?

8 A It was before.

9 Q Where did that meeting take place?

10 A Where or when?

11 Q Where?

12 A In the administration building. They have a  
13 conference room kind of like this one.

14 Q Was at it the administration building in  
15 Cumming?

16 A Yes, ma'am.

17 Q Who all was present for the meeting with  
18 Sarah Cummings?

19 A Cameron and myself, Sarah Cummings; and  
20 there was another lady that came in late. I don't  
21 recall her name. She was from HR too. We had already  
22 started talking to Sarah once she got there.

23 Q What did you tell Sarah?

24 A I told her that my wife was an RN in the OR,  
25 Cameron's wife was an RN, she was a facility

1 supervisor, and before we said or did anything, we  
2 didn't want any trouble. We felt there could be  
3 retaliation because we were talking about Paul Schempp  
4 and John Cummings.

5 And she said there would be no retaliation,  
6 no problems, there would be nothing that resembled it,  
7 that that's what they were there for and they handled  
8 problems like this every day.

9 Q And at this point the call pay had been  
10 taken away; correct?

11 A Yes, ma'am.

12 Q It wasn't as if they could have retaliated  
13 against you by taking the call pay, because that had  
14 already happened; right?

15 A Yes, ma'am.

16 Q And you were in the meeting with Sarah  
17 Cummings, and what concerns did you share with  
18 Ms. Cummings?

19 A We shared the concern that someone from  
20 outside the company was hired, the job wasn't posted,  
21 the job was posted for one day after he was hired,  
22 that that didn't seem right to us. And the situation  
23 with the call time, we were being told we were  
24 ineligible but Larry was eligible. He was an hourly  
25 employee like us. It had been taken away from us

1 policy?

2 A No, ma'am.

3 Q And I think you told me you got the form  
4 from Ms. O'Kray there at the Cumming facility;  
5 correct?

6 A Yes, ma'am.

7 Q And she had been a Georgia Baptist employee  
8 like you; correct?

9 A Yes, ma'am.

10 Q So she had not been working for Northside  
11 prior to the purchase; correct?

12 A No, ma'am.

13 Q Going back to Defendant's Exhibit 8, which  
14 is the grievance form that you filled out, there on  
15 the second page, paragraph No. 6, it says list any  
16 other pertinent facts, and you list that the manager  
17 hired does not have a college degree. Why did you  
18 think that was pertinent?

19 A At the time we thought that, I thought  
20 that -- We were told by Larry that he had no  
21 experience in the hospital field. Carrie told us just  
22 to give an overview. She said don't go into any  
23 detail, just give an overview of what we were feeling  
24 and what we thought and that they would come talk in  
25 depth with us about it. So this was just a

1 generalization.

2 Q Right. But one of the facts you listed  
3 there in page 2, in paragraph 6, is that the manager  
4 hired does not have a college degree.

5 A Right.

6 Q Why did you think that was pertinent or  
7 necessary for you to list that information?

8 A It had always been before. They always  
9 wanted their managers to have a college degree.

10 Q Who told you that?

11 A That's just the way it had always been at  
12 the hospital.

13 Q Did you have a college degree?

14 A No, ma'am.

15 Q Do you have any college?

16 A No, ma'am.

17 Q You also have listed here that the manager  
18 has less years of experience in the  
19 hospital-engineering field than anyone in the  
20 department presently.

21 A Yes, ma'am.

22 Q Now, at the time you filled this out, had  
23 you had discussions with Mr. Schempp about his  
24 background and experience?

25 A No, ma'am.

1 looks like you submitted your grievance form on or  
2 about April 16th, 2003.

3 A Yes, ma'am.

4 Q And I take it in close proximity to that,  
5 you met with Ms. Cummings and somebody else from HR;  
6 correct?

7 A Yes, ma'am.

8 Q How much time passed between your submitting  
9 your grievance and your meeting with Ms. Cummings,  
10 Sarah Cummings?

11 A A week.

12 Q And the next person in management that you  
13 met with was Mr. Cummings; is that correct?

14 A Yes, ma'am.

15 Q How did you find out there was going to be a  
16 meeting with Mr. Cummings?

17 A I believe Paul said John was coming up to  
18 talk to us.

19 Q Who all was present for the meeting with  
20 Mr. John Cummings?

21 A John and Paul, Larry Castleberry, and  
22 Cameron Edwards and myself.

23 Q Where was that meeting held?

24 A Back in our generator-switch-gear room,  
25 electrical room.

1 Q How long did it last?

2 A It didn't last, I would say, 45 minutes  
3 maybe. They had another meeting to go to that they  
4 were already late for, as I recall.

5 Q Who opened the meeting?

6 A I believe John did.

7 Q What do you recall Mr. Cummings saying  
8 during the meeting?

9 A He came up, and he had a piece of paper with  
10 the chart of the CEO and the people who answered to  
11 the CEO on down the line and where he fit in and where  
12 Lynn Jackson fit in. That was the only two names that  
13 I knew on the whole list.

14 Q So he was describing the hospital hierarchy  
15 to you?

16 A Yes, ma'am.

17 Q What did he say about where he fit in?

18 A He said who he answered to and who he was  
19 under and how many people he had under him.

20 Q And did he make clear that the maintenance  
21 area came under his supervision?

22 A Yes, ma'am.

23 Q And that Lynn Jackson didn't have  
24 responsibility for maintenance.

25 A He didn't say anything about Lynn at that

1 meeting that I recall. I don't believe Lynn was  
2 brought up.

3 Q So she wasn't mentioned at all?

4 A Not that I recall.

5 Q So he first went through where he fit in on  
6 the chart and what his areas of responsibilities were?

7 A Yes, ma'am.

8 Q What did he discuss after that?

9 A We discussed, I believe, the hiring of Paul,  
10 and then we discussed the call pay.

11 Q Who brought up the issue about Paul's  
12 hiring?

13 A I don't recall.

14 Q What do you recall being said about Paul's  
15 hiring?

16 A I recall something being said about that it  
17 was not posted at our facility, at the facility at  
18 which the job was open.

19 Q Anything else?

20 A He said that as far as he knew, everything  
21 was taken care of by HR, if we had a problem with  
22 that, we would need to take it up with HR.

23 Q What else was discussed?

24 A The call-pay issue was discussed. Cameron  
25 was very upset about the pay part of it.



1 Q You said he was very upset?

2 A Yes, ma'am.

3 Q How could you tell he was upset?

4 A That's all he had talked about for a few  
5 weeks.

6 Q Could you tell in the meeting that he was  
7 upset about the call-pay issue?

8 A Yes, ma'am.

9 Q How could you tell: In his voice?

10 A Yes, ma'am.

11 Q And his demeanor?

12 A Yes, ma'am.

13 Q Did you say anything about the call-pay  
14 issue?

15 A Yes, ma'am. But I can't recall exactly what  
16 it was. John said he could not have everyone on call,  
17 and Cameron said that when you come in here and you  
18 cut a man's pay six to eight to ten thousand dollars,  
19 that really hurts. But there was no explanation given  
20 on why we were ineligible, why we were and Larry  
21 wasn't, anything like that.

22 Q Was there anything about discipline if you  
23 didn't respond?

24 A No, ma'am. That wasn't brought up.

25 Q So that issue didn't even come up?

1 about our inability to take call, and we never really  
2 got an answer. I don't know if it was because we  
3 didn't have that long of a meeting or what. I thought  
4 maybe we could talk things out if we kept talking.

5 Q Mr. Cummings had made it pretty clear, had  
6 he not, that he couldn't put everybody down on the  
7 on-call pay; correct?

8 A Correct.

9 Q So you thought talking to him more would  
10 make him change his mind?

11 A I just thought maybe I would learn why an  
12 hourly employee like Larry was on call but an hourly  
13 employee like me wasn't. That's all I wanted.

14 Q With respect to you and Larry, you would  
15 agree that your duties were not the same; correct?

16 A No, ma'am.

17 Q You would not agree, or you would agree?

18 A I would agree my duties weren't the same as  
19 Larry's.

20 Q Larry was acting more in a lead role;  
21 correct?

22 A Yes, ma'am.

23 Q Following your meeting with Mr. Cummings --

24 A Yes, ma'am.

25 Q And this is still in that April time frame;

1 A No, ma'am.

2 Q Was there any discussion about the change  
3 in, like, the gas card and how that was being handled  
4 or the Home Depot card or whatever?

5 A No, ma'am.

6 Q At that first meeting, was there any  
7 discussion about how the Cumming facility ran in  
8 comparison to the main hospital?

9 A There was some discussion about they wanted  
10 to run the Cumming facility sort of as a mirror image  
11 of the bigger facility eventually.

12 Q During that initial meeting, was there any  
13 discussion about whether anybody at the main hospital  
14 was on call pay?

15 A No, ma'am.

16 Q So that issue just never came up at all?

17 A No, ma'am.

18 Q Did John Cummings indicate why he wanted the  
19 Cumming facility to run a lot like the main facility?

20 A No, ma'am.

21 Q But you understood he was over both  
22 facilities; right?

23 A After the second meeting, yes, ma'am.

24 Q During the first meeting, didn't he show you  
25 the diagram?

1 A Yes, ma'am; in the transition.

2 Q The third meeting, I guess --

3 A Yes, ma'am.

4 Q -- is the one that you were about to tell me  
5 about that lasted about 30 to 45 minutes, and present  
6 was yourself and Mr. Cummings; correct?

7 A Yes, ma'am.

8 Q Did you take any notes of the meeting?

9 A No, ma'am.

10 Q Any tape recordings of the meeting?

11 A No.

12 Q What occurred at the meeting?

13 A He said he was getting back to all of us on  
14 our issues that we had discussed in the prior meeting,  
15 the hiring of Paul. He said he had checked with HR  
16 and that they assured him that everything was okay  
17 with that and the call pay was an issue that had come  
18 up six months ago and Larry Castleberry knew that it  
19 would be cut out and my administrator, Lynn Jackson,  
20 knew it would be cut out. But he said neither one of  
21 them felt obligated to tell us that.

22 Q Did he share with you the fact that as part  
23 of the purchase of the Georgia Baptist facility,  
24 Northside had to agree not to make any pay changes for  
25 a six-month period?

1           A     There would be no personnel or pay or  
2     anything like that. Everything would be frozen, I  
3     believe was the way they put it, for six months.

4           Q     Right. And then after that point they could  
5     go in and make changes; is that correct?

6           A     Yes, ma'am.

7           Q     And this April period would have fallen  
8     within that six months; correct?

9           A     Yes, ma'am.

10          Q     What else do you recall him telling you?

11          A     That when it came up before, he saw a morale  
12     problem in the department; Cameron and I seemed like  
13     we had bad morale.

14          Q     Did you ask him for specifics?

15          A     No, ma'am.

16          Q     And I think you yourself said that Cameron  
17     was pretty upset during the meeting over the call-pay  
18     issue; right?

19          A     Yes.

20          Q     What else was said?

21          A     That because of that, he wanted to make some  
22     changes.

23          Q     Because of the morale problem?

24          A     Yes, ma'am.

25          Q     Did he tell you what changes he wanted to

1 make?

2 A He wanted Cameron and I to go downtown and  
3 work at the main facility.

4 Q And did he say who would handle your duties  
5 at the main facility?

6 A At my facility?

7 Q At Cumming.

8 A He said he would bring someone up from down  
9 there.

10 Q So he basically was going to do a swap?

11 A Yes, ma'am.

12 Q At that point the maintenance people, other  
13 than the supervisor, Mr. Schempp, were yourself,  
14 Cameron Edwards, and Larry Castleberry; correct?

15 A Yes, ma'am.

16 Q At that point Larry Castleberry had already  
17 been at the main facility for 25-plus years; right?

18 A Yes, ma'am.

19 Q So he knew how the main facility operated;  
20 correct?

21 A Yes, ma'am.

22 Q Yourself and Mr. Edwards had never worked at  
23 the main facility; correct?

24 A Yes, ma'am.

25 Q You had always been at the Cumming location?

1 A Yes, ma'am.

2 Q Was there any discussion about how long this  
3 would take place?

4 A Yes, ma'am.

5 Q What was said?

6 A He said three months, six months, or maybe  
7 longer.

8 Q Did he say what it depended on?

9 A I think he said when I got a better  
10 attitude.

11 Q When you got a better attitude?

12 A Yes, ma'am.

13 Q What was your response?

14 A I was very upset.

15 Q What did you say to him?

16 A I told him it didn't make any sense to me to  
17 do that, that I had proved I could do my job here,  
18 that I had a child -- my wife came in at 6 o'clock --  
19 that it was my responsibility to get to school, that I  
20 had elderly parents here and it just didn't make any  
21 sense. And I asked him if it made sense to him.

22 Q What did he say?

23 A He said: I'm not going to tell you it makes  
24 sense, but I'm going to tell you that's what I can and  
25 will do.

1           Q     At that point, I know you said he told you  
2     it would last until you got a better attitude and he  
3     also mentioned he thought there was a morale problem.  
4     Did he say anything about he thought your actual job  
5     performance was poor?

6           A     No, ma'am. I don't know how he would know  
7     that.

8           Q     So he never indicated that he didn't think  
9     you could do the job; correct?

10          A     No, ma'am.

11          Q     He focused on what he termed your poor  
12     attitude?

13          A     Yes, ma'am.

14          Q     What else was said?

15          A     He said something to the effect of, at some  
16     point in time, if and when he decides to bring me  
17     back, which made me believe that I wasn't coming back.

18          Q     Did he tell you you wouldn't come back? He  
19     never told you you would not come back; right?

20          A     No, ma'am. He just said if and when I  
21     decide to bring you back.

22          Q     You also indicated a few minutes ago that he  
23     told you you would come back when you got a better  
24     attitude; correct?

25          A     (Witness nods affirmatively.)



1 going to change?

2 A It wasn't discussed.

3 Q So all you knew was that you were to report  
4 to maintenance at the main facility?

5 A Monday morning.

6 Q And your meeting with Mr. Cummings took  
7 place -- Do you recall what day of the week it was?

8 A Friday, May 16th, I believe.

9 Q Anything else you can think of that was said  
10 during the meeting?

11 A Only that he was humiliated and in the  
12 future he would hope I would follow the chain of  
13 command. That's all I can remember.

14 Q And if I understood your testimony, between  
15 the second meeting and this meeting with Mr. Cummings,  
16 you had not gone back to HR; correct?

17 A No, ma'am.

18 Q You had not had any contact with HR?

19 A I was waiting on their reply.

20 Q Did you report to the main facility on  
21 Monday?

22 A No, ma'am.

23 Q And why was that.

24 A I was sick. I had a doctor's excuse for  
25 three days.

1 correct?

2 A Yes, ma'am.

3 Q So she told you to sit tight?

4 A Yes, ma'am.

5 Q At that point did you reach out to John  
6 Cummings anymore?

7 A No, ma'am.

8 Q What about Mr. Schempp: Did you reach out  
9 to Mr. Schempp at all?

10 A I wrote a letter stating the reasons why I  
11 would not accept a transfer downtown.

12 Q But you never attempted to call Mr. Schempp?

13 A We talked over the weekend and I think on  
14 Monday.

15 Q How is it that you spoke to him over the  
16 weekend?

17 A I believe I called him or paged him. I'm  
18 not sure. He called me back, and I told him that I  
19 just could not go downtown and do that.

20 Q What did he say?

21 A At some point in time, he said if I  
22 couldn't, John would fire me.

23 Q If you didn't go as directed, you would be  
24 fired; correct?

25 A Yes, ma'am.

1 Q Because you would not have been obeying the  
2 direction; correct?

3 A Yes, ma'am.

4 Q Did you talk to Mr. Schempp at all about  
5 school will be out in two weeks, can I delay starting?

6 A No, ma'am. Like I said, I was very upset,  
7 and I was not thinking straight.

8 Q And you had also made up in your mind that  
9 you were not going to be directed to go to the main  
10 hospital; correct?

11 A Yes, ma'am.

12 Q That Monday you talked to Ms. Cummings?

13 A Yes, ma'am.

14 Q Did you speak to anybody else in Northside  
15 management or Northside HR on Monday?

16 A No, ma'am. Sarah Cummings never called me  
17 back, so I called her Tuesday.

18 Q And did you speak to her on Tuesday?

19 A Yes, ma'am.

20 Q What was said on Tuesday?

21 A She said she had spoken to her boss about it  
22 but was not getting any feedback, that she wanted me  
23 to talk to her boss.

24 Q Who was her boss?

25 A I believe Bridget Green. I'm not sure about

1 that.

2 Q Had you spoken to Ms. Green before?

3 A She either transferred me, or I called back.

4 No, ma'am, I had not spoken to her before, that I  
5 recall.

6 Q Tell me about your discussion with  
7 Ms. Green?

8 A I told her the situation, and all she said  
9 was that she felt John was a nice guy and I needed to  
10 work with him. That's all she would say.

11 Q Did you have any discussion with her about  
12 trying to delay start?

13 A No, ma'am.

14 Q Did she suggest that you call Mr. Cummings  
15 and try to work it out?

16 A She said John was a nice guy and I needed to  
17 work with him. That's all she said.

18 Q Did you call Mr. Cummings?

19 A No, ma'am.

20 Q Defendant's Exhibit No. 9, is that a copy of  
21 a medical certificate you got from your doctor?

22 A Yes, ma'am.

23 Q And you said you went to the doctor because  
24 you were having sinus problems?

25 A Yes, ma'am. I was sick at the time, and I

1 was nervous. And she said you need to just calm down,  
2 and she gave me a work excuse for, I believe, three  
3 days.

4 Q I know you said you were on Paxil for some  
5 time. Did she increase the amount you were taking.

6 A No, ma'am.

7 Q Did she give you additional medication?

8 A No, ma'am.

9 Q She has on here you could return on the  
10 22nd; correct?

11 A Yes, ma'am.

12 Q What day was the 22nd going to be on; do you  
13 recall?

14 A That was Thursday.

15 Q So you were released to return to work on  
16 Thursday?

17 A Yes, ma'am.

18 Q I know you said you talked to Ms. Cummings  
19 and Bridget Green on Tuesday. Did you at any point  
20 call Mr. Cummings during that week, John Cummings?

21 A No, ma'am. He called me on Thursday and  
22 told me I was terminated.

23 Q Did you show up for work on Thursday?

24 A No, ma'am.

25 Q Did you call and tell them you wouldn't be

1 note -- correct -- that you had tendered to the  
2 hospital, your employer, concerning your condition --  
3 correct --

4 A Yes, ma'am.

5 Q -- and the fact that you would not be  
6 available to return to work until that Thursday, which  
7 you believe was the 22nd?

8 A Yes, ma'am.

9 Q During the interim between getting the  
10 doctor's note on the 19th and the 22nd, you submitted  
11 a letter to Northside; correct?

12 A Yes, ma'am.

13 Q And that letter was submitted prior to your  
14 termination; correct?

15 A Yes, ma'am.

16 Q I ask you to take a look at what we have  
17 marked as Defendant's Exhibit 10, and you let me know  
18 if you recognize that document.

19 Is this a copy of the letter that you sent  
20 to Northside?

21 A Yes, ma'am.

22 Q And it indicates it was received by  
23 Northside on the 21st?

24 A Yes, ma'am.

25 Q Is that the day it was sent?

1 A Yes, ma'am, I believe so.

2 Q Who typed out the letter?

3 A I wrote it down, and I believe my wife typed  
4 it on the computer.

5 Q So you drafted it, and then she typed it out  
6 on the computer; is that correct?

7 A Yes, ma'am.

8 Q In the letter you list basically three  
9 reasons why you refused to transfer to the Northside  
10 Atlanta campus; correct?

11 A Yes, ma'am.

12 Q The first thing you said was about your  
13 travel time increasing to well over two hours each  
14 day.

15 A Yes, ma'am.

16 Q Had you done some trial runs to see how long  
17 it would take you?

18 A No, ma'am.

19 Q What was that based on?

20 A I have been down 400 in the morning, and I  
21 know how it is. I know how the traffic is.

22 Q The second thing you've got listed is extra  
23 expenditures for childcare.

24 A Yes, ma'am.

25 Q Because according to your testimony, your

1 child was going to be in school for approximately ten  
2 days --

3 A Yes, ma'am.

4 Q -- after this point?

5 A Yes, ma'am.

6 Q And between your inlaws and your parents,  
7 they would start keeping him for the summer; correct?

8 A Yes, ma'am.

9 Q What were you referring to when you said  
10 extra expenditures?

11 A My wife goes in to work at 6 o'clock, and if  
12 I had to drive downtown, this would put an extra  
13 burden on -- I would have to get my child up a lot  
14 earlier. I would have to leave by at least 6:00, take  
15 him to day care, and let them take him to school.

16 Q Your parents couldn't take him to school?

17 A Not everyday, no, ma'am.

18 Q But they kept him for you throughout the  
19 summer?

20 A They keep him some. They don't keep him all  
21 the time.

22 Q You said between your parents and your  
23 wife's parents; correct?

24 A Yes, ma'am.

25 Q And they live about a mile away from you?



1 A My parents do, yes, ma'am.

2 Q And if I understood your testimony, school  
3 would get out around the first of June?

4 A Yes, ma'am.

5 Q And the date of this letter was May 21st?

6 A Yes, ma'am.

7 Q And then you have that your gasoline expense  
8 and your personal vehicle expense would increase;  
9 correct?

10 A Yes, ma'am.

11 Q Were there any other personal reasons why  
12 you felt like you could not abide by your director's  
13 instructions.

14 A Just the fact that I believed that I had  
15 been retaliated against. That was the number one  
16 reason.

17 Q Any other reason?

18 A The fact that I thought I had proved that I  
19 could do my job where I was and there was no reason  
20 for me to be sent downtown, it didn't make sense to  
21 me.

22 Q Going near the bottom, you say I could not  
23 help but fear I am being discriminated against. I am  
24 forty years old. Why did you feel like you were being  
25 discriminated against?

1           A     I felt the policies and procedures were not  
2 being followed. And I feel that any time people  
3 aren't -- that policies and procedures are there for  
4 everyone and when they are not being followed in your  
5 case, I feel that's discrimination.

6           Q     Any other reasons you felt like you were  
7 being discriminated against?

8           A     Well, I was over forty years old, and Paul's  
9 job had not been posted, and he is a younger man. And  
10 I felt like things, like I said, the policies and  
11 procedures had not been followed, and I felt this was  
12 just something that I felt discriminated against.

13          Q     And in terms of your feelings about age  
14 discrimination, that Paul was a younger man, had  
15 anybody ever said anything to you about your age and  
16 being over forty?

17          A     No, ma'am.

18          Q     Prior to the letter, had you told anybody  
19 you felt discriminated against because of your age?

20               MR. PANKEY: Other than what he has already  
21 testified about?

22 BY MS. BIVINS:

23          Q     Right. At any point, because I don't  
24 remember any earlier testimony; at any point prior to  
25 sending this letter here. I know you said you

1 questioned the posting and you didn't know whether  
2 Paul had a college degree. But prior to this letter  
3 dated May 21st, had you told anybody at Northside  
4 management or Northside human resources that you felt  
5 like you were being discriminated against because of  
6 your age?

7 A No, ma'am.

8 Q Other than the fact that you feel like the  
9 policies were not followed and that Mr. Schempp is a  
10 younger man, any other reasons why you feel that you  
11 were discriminated against based on your age?

12 A I feel discriminated against about speaking  
13 out against the policies.

14 Q Now, you were not the only person speaking  
15 out against the policies; correct?

16 A Correct.

17 Q Cameron Edwards also spoke out against the  
18 policies; correct?

19 A Yes, ma'am.

20 Q And he's a younger guy; correct?

21 A Yes, ma'am.

22 Q Under 40?

23 A Yes, ma'am.

24 Q And he too was told he was being transferred  
25 to the Atlanta campus?

1 A Yes, ma'am.

2 Q Do you know whether or not he, in fact,  
3 transferred?

4 A He did transfer.

5 Q Do you know whether he asked for additional  
6 time before?

7 A He did.

8 Q Do you know who he made that request to?

9 A John Cummings.

10 Q How did you find that out?

11 A He told me.

12 Q When did you guys have that discussion?

13 A I ran into him in Cumming, and he told me  
14 that he told John he had to have a couple weeks to  
15 make arrangements to go down.

16 Q Before writing this letter on May 21st, did  
17 you have any discussion with Cameron Edwards about  
18 whether or not he planned to take the reassignment?

19 A No, ma'am. Cameron was out the day that  
20 John and I spoke, and I think it took a week or so for  
21 John to come back and talk to Cameron, so this letter  
22 had already been written.

23 Q So you didn't touch base with Cameron at all  
24 before writing the letter to alert him to the fact  
25 that you had been reassigned?

1           A     I believe it was the week after that, two  
2 weeks.

3           Q     What did he tell you?

4           A     He said that he had spoken to John, that he  
5 had had the DON, director of nursing, sit in the  
6 meeting with him because he did not want to sit in the  
7 meeting with John by himself. He wanted a witness.

8           Q     What did he say happened at the meeting?

9           A     He said he had had time to think about it,  
10 and he told John he needed two weeks, that he would go  
11 down there. He said he did not have a choice; whether  
12 it was right or wrong, he had a baby on the way, and  
13 he had to do it.

14          Q     He basically showed up at the main campus as  
15 he was instructed to do?

16          A     Yes, ma'am.

17          Q     Did you have any discussions with John  
18 Cummings or anybody in HR after sending this letter?

19          A     No, ma'am, not that I recall.

20          Q     You don't recall a telephone conversation  
21 with John Cummings about the letter?

22          A     He called and left me a message and told me  
23 I was terminated on Thursday.

24          Q     You sent the letter on Wednesday the 21st?

25          A     Whenever the 21st was, yes, ma'am.

1 Q You didn't talk to anybody at Northside on  
2 the 21st?

3 A Not that I recall. I had talked to Sarah  
4 Cummings when I was drafting this letter and told her  
5 what was going on, same general time period.

6 Q But by the time you were talking to Sarah  
7 Cummings on the 21st, you had been instructed to show  
8 up at the main hospital for work; correct?

9 A Yes, ma'am.

10 Q So you sent this letter basically telling  
11 them that you were not accepting the transfer to the  
12 Northside Atlanta campus; correct?

13 A Yes, ma'am.

14 Q And so on the 22nd you, in fact, did not  
15 show up for that shift; correct?

16 A Yes, ma'am.

17 Q That's correct?

18 A Yes, ma'am.

19 Q Did you have any discussion with Lynn  
20 Jackson about your letter?

21 A No, ma'am.

22 Q What about Carrie O'Kray?

23 A No, ma'am.

24 Q Did you have any discussion with Paul about  
25 your letter?

1 A No, ma'am.

2 Q And just to make sure that your testimony is  
3 clear, you didn't ask anybody to delay your start  
4 date; correct?

5 A No, ma'am.

6 Q And in the letter there is nothing in here  
7 where you make a request for your start date to be  
8 delayed; correct?

9 A No, ma'am. When John came up and told me,  
10 he didn't relay any option of you can do this in a  
11 week or two weeks or whenever.

12 Q Right. But you didn't ask for it?

13 A No, ma'am. I was upset, and I didn't think  
14 about it.

15 (Defendant's Exhibit 11 was marked for  
16 identification.)

17 BY MS. BIVINS:

18 Q Let me get you to take a look at what we  
19 have marked Defendant's Exhibit 11. Have you seen  
20 that document before?

21 A Yes, ma'am. It was sent to the house.

22 Q And you signed for it?

23 A My wife did, yes, ma'am.

24 Q And you said that on Thursday you received a  
25 voice-mail message from --

1 A I had a message on the home phone from John.

2 Q Did you call him back?

3 A Yes, ma'am. I got his secretary, I believe,  
4 the first time, and she said he was out of the office.  
5 And then I called back later on and got his secretary,  
6 and she said he was in a meeting, and she said: But I  
7 can transfer you.

8 She transferred me to John, and he said this  
9 was to let me know that I had been terminated and that  
10 he was sending me this letter.

11 Q So when he left you a message on your  
12 answering machine, it was just that you needed to call  
13 him back?

14 A Yes, ma'am.

15 Q And when you called him back, when you guys  
16 finally connected, that's when he told you you were  
17 being terminated?

18 A Yes, ma'am.

19 Q Did he go into any reasons why?

20 A No, ma'am.

21 Q Did you ask him any questions?

22 A No, ma'am.

23 Q At that point did you say anything about can  
24 there be a delay or anything?

25 A No, ma'am. I had thought about it at that



1 time as I was talking to him. I thought maybe since  
2 he gave Cameron the two weeks....

3 Q So by that time you knew Cameron had the two  
4 weeks?

5 A Yes, ma'am.

6 Q So you actually found out during that week?

7 A Yes, ma'am, it was that week. I don't  
8 believe Cameron had it. I believe Cameron told me he  
9 was going to ask for it. I'm not sure he had it. It  
10 entered my mind to ask John for two weeks.

11 Q Did you ask him?

12 A No, ma'am. He said: This is just to let  
13 you know you're terminated. I will be sending you a  
14 letter.

15 And he hung up.

16 Q And you didn't say anything at any point  
17 about can I have two weeks?

18 A No, ma'am.

19 Q And the letter you wrote the day before  
20 didn't say anything about asking for two weeks?

21 A No, ma'am.

22 Q When Cameron told you that he was going to  
23 ask for two weeks, did he say when he was asking for  
24 the two weeks?

25 A He said when he talked to John.

1 Q And you don't know when he talked to John?

2 A No, ma'am.

3 Q Did he give you any reason to believe that  
4 he thought it was going to be futile to ask John for  
5 an additional two weeks?

6 A He didn't give an opinion. He just told me  
7 what he was going to ask for.

8 (Defendant's Exhibits 12 and 13 were  
9 marked for identification.)

10 BY MS. BIVINS:

11 Q Let me ask you to take a look at what we  
12 have marked Defendant's Exhibit 12, and you can let me  
13 know whether you have ever seen that document before.

14 A Yes, ma'am.

15 Q Is that your signature at the bottom?

16 A Yes, ma'am.

17 Q Is it a copy of your EEOC charge?

18 A Yes, ma'am.

19 Q Who typed it up for you?

20 A The lady at the EEOC.

21 Q Did you go in to the EEOC?

22 A Yes, ma'am.

23 Q And that was May 22nd?

24 A Yes, ma'am.

25 Q So it was the same day you found out you

1 were being terminated?

2 A Yes, ma'am.

3 Q How did you find out about EEOC?

4 A From my lawyer.

5 Q I don't want to know anything about your  
6 discussions with your attorney. But you yourself went  
7 in to meet with the people at EEOC?

8 A Yes, ma'am. You have to meet with them  
9 alone.

10 Q So you drove down to Atlanta and met with  
11 them?

12 A Yes, ma'am.

13 Q Did you have an opportunity to read over the  
14 charge before you actually signed it?

15 A This?

16 Q Uh-huh (affirmative).

17 A Yes, ma'am.

18 Q In Number 2 there it says that John  
19 Cummings, director of operations, told me I would be  
20 transferred to see how things are run at another  
21 facility.

22 A Yes, ma'am.

23 Q Is that consistent with what you recall  
24 Mr. Cummings telling you?

25 A Yes, ma'am.

JUL-23-2003 13:53

P.02/05

## NORTHSIDE HOSPITAL GRIEVANCE FORM

EMPLOYEE NAME: <u>Douglas Ray Burnette</u>	
POSITION: <u>maintenance assistant</u>	DEPARTMENT: <u>plant operations</u>
DATE OF HIRE: <u>oct 2002</u> DATE OF INCIDENT OR DISCIPLINARY ACTION: _____	

This form is designed to help you organize basic information required to resolve personnel problems.

## INSTRUCTIONS

1. Only those employees who have completed their probationary period are eligible to use the grievance procedure.
2. This form must be completed and submitted to the Employee Relations Manager within ten days as outlined in the grievance procedure. This worksheet will become part of the permanent grievance file.
3. Each question must be answered.
4. If any question does not apply, write in: "Does Not Apply".
5. If more space is needed, use additional sheets and staple to this form.

## COMPLETE THE FOLLOWING INFORMATION TO BE USED IN YOUR GRIEVANCE

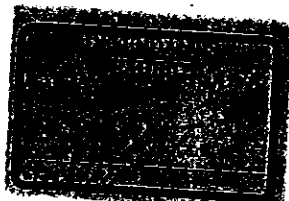
1. Describe briefly the grievance or complaint:

① The hiring practice of the plant operations coordinator. The position was posted on a Friday and the manager was at orientation on Monday.

② Standby call time taken away without notice, we were told we are no longer eligible because we are hourly employees. We were told he would then call us to come in when there was an emergency, and if we did not we could face disciplinary action. This is against hospital for on call pay.

3. Describe the incident in detail. (Include the location, date, and time of day; identify the person(s) involved and list any witnesses.)

The threat of disciplinary action was made to Cameron Edwards but was regarding both Cameron and myself on Tuesday, April 1st.



Northside 0034

JUL-23-2003 13:53

P.03/05

4. Which Northside Hospital rule(s), regulation(s) or practice(s) did your supervisor indicate that you violated?

① The Northside hospital "policy" that was violated was the hiring of Paul Schemp  
 ② The other practice that was violated is we were instructed we were no longer on call because we were not eligible for standby pay due to the fact we were hourly employees, most of the employees on call for the hospital are hourly and receive standby pay

5. Attach copies of any bulletins, schedules, disciplinary action notices, or other documents pertaining to this incident.

6. List any other pertinent facts:

The manager hired does not have a college degree and has less years experience in hospital engineering field than any one in the department presently

7. Describe any previous disciplinary actions you received that may relate to this grievance.

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*Douglas Ray Lamm*  
 Employee Signature

4-16-03  
 Date

Northside 0035

**Certificate to return to work**

Name Ray Burnett  
has been under my care from 5-19-03 to 5-21  
and will be able to return to work on 5-22-03  
Nature of illness or injury \_\_\_\_\_

☐ Restrictions ☐ Light Work

Comments \_\_\_\_\_

Dr. Paul Phone 784-7439  
Address \_\_\_\_\_ Date 5-19-03



1200 Baptist Medical Center Dr  
Cumming, GA 30041

770-844-3230

**Northside Hospital -  
Forsyth  
Radiology Dept**

# Fax

To: Human Resources From: Ray Burnette  
Fax: 404-851-8320 Pages: 2  
Phone: \_\_\_\_\_ Date: 5-21-3  
Re: \_\_\_\_\_ CC: Sarah Cummings

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Thank you



Northside 0030

MAY 21 2003

Human Resources  
Northside Forsyth Hospital  
Cumming, Georgia 30041

I, Douglas Ray Burnette, wish to clarify that I am not resigning my position as a Plant Operations Technician at Northside Forsyth Hospital. I was told on Friday May 16, 2003 at 2:00 p.m. I was to report to Northside Hospital in Atlanta for work at 7 a.m. the following Monday by John Cummings. I am not requesting a transfer to Northside's Atlanta campus nor could I accept one for the following reasons:

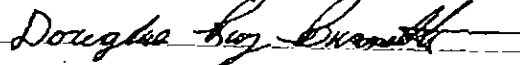
1. My travel time will increase to well over 2 hours each day.
2. I will incur extra expenditures for child care.
3. My gasoline expense and cost of maintaining my vehicle will increase.

I feel this was brought on me because I notified Human Resources when I was told I would no longer be eligible for call pay but would be expected to be on "stand-by" without pay and still be expected to respond. I notified Human Resources that this was against the written hospital policy. I was told by the Plant Operations Coordinator Paul Schemmp that if I did not accept this situation there would be "disciplinary action". I also questioned the hiring of the Plant Operations Coordinator without the position being posted at our facility as outlined in hospital policy.

Human Resources assured me that my concerns would be investigated and there would be no "retaliation" for voicing my concerns.

I cannot help but feel that I am being discriminated against. I am over 40 years old and have been employed with this facility for almost 15 years and through three management changes. The new Plant Operations Coordinator hired without my knowledge of the position being open is a much younger man than me. I have contacted Human Resources several times to no avail. Sarah Cummings has indicated she must speak to her supervisor regarding these matters but has received no response from them.

I am emphasizing that I am not resigning my position with Northside Forsyth Hospital and cannot due to the reasons above accept a transfer to the Northside Atlanta campus.

  
Douglas Ray Burnette

cc: Lynn Jackson, Carrie O'kay, Paul Schemmp, John Cummings, Sarah Cummings

signed human resources  
Plant Operations Coordinator  
disciplinary action" I also questioned  
the hiring of the Plant Operations Coordinator without the position  
being posted at our facility as outlined in hospital policy.



## CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Present

or

Agency(ies) Charge No(s):



FEPA



EEOC

110-2003-31288

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Douglas R. Burnette

Home Phone No. (Ind Area Code)

(770) 889-8909

Date of Birth

03-28-1962

Street Address

City, State and ZIP Code

3891 Samples Road Cumming, GA 30041

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

NORTHSIDE HOSPITAL

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(770) 844-3200

Street Address

City, State and ZIP Code

1200 Baptist Medical Center Dr Cumming, GA 30041

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

03-10-2003

05-16-2003

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was employed by the above named company in October 2002. On or about March 10, 2003, I was informed that I was ineligible to take call. I complained to Human Resources in March 2003, yet no remedial action was taken. I was transferred to another location on May 16, 2003, which is far away from my residence.

- II. No remedial action was taken when I complained to Human Resources. John Cummings, Director of Operations, told me that I would be transferred to see how things are run at another facility.
- III. I believe that I have been discriminated against because of my age, 41, and retaliated against for opposing unfair employment practices, in violation of the Age Discrimination in Employment Act of 1967.



RECEIVED

MAY 22 2003

EEOC-ATDO

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

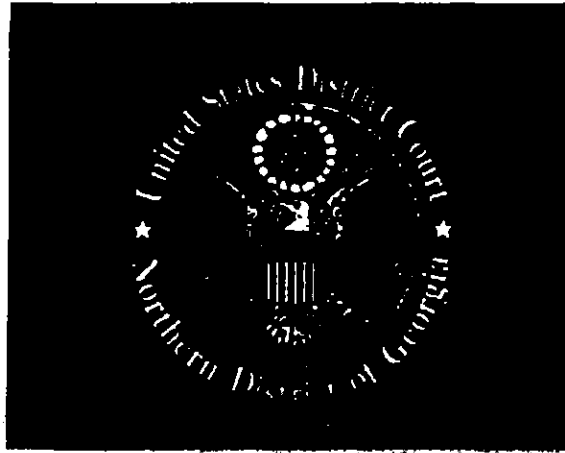
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

May 22, 2003

Date

Charging Party Signature



Cummings  
~~EXHIBIT / ATTACHMENT~~

Depos

(To be scanned in place of tab)

COPY

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE, )  
 )  
Plaintiff, )  
 )  
vs. ) CIVIL ACTION FILE  
 ) NO.: 1:03-CV-2337-ODE  
NORTHSIDE HOSPITAL, )  
 )  
Defendant. )

- - -

The deposition of JOHN CUMMINGS, taken  
by the Plaintiff for the purposes of cross-  
examination, discovery and all other purposes  
allowed under the Federal Rules of Civil  
Procedure; all formalities waived, excluding  
the reading and signing of the deposition;  
before Debbie G. Williams, Certified Court  
Reporter and Notary Public in and for the State  
of Georgia; commencing at 10:15 a.m.,  
Wednesday, December 16, 2003, at 320 Dahlonega  
Street, Cumming, Georgia.

\*\*\*\*\*

DEBBIE G. WILLIAMS  
Certified Court Reporter  
2515 Little John Court  
Cumming, Georgia 30040  
(770) 886-9814

1 A. 083-54-4595.

2 Q. And where do you currently reside?

3 A. 22 Highland Drive, Atlanta, 30305.

4 Q. How long have you lived there?

5 A. About three weeks.

6 Q. Okay. Have you ever given a deposition  
7 before?

8 A. Yes, I have.

9 Q. Okay. How many times have you given a  
10 deposition before?

11 A. I believe once.

12 Q. Once. Were you -- what kind of case was it?

13 A. I believe it was a case where MARTA was --  
14 had deposed Northside Hospital in the settlement of the  
15 purchase of their property, where their tunnel went under  
16 our property to --

17 Q. Okay.

18 A. -- the medical station.

19 Q. And what was the basis of your testimony?  
20 What, vaguely, I guess, were you speaking about?

21 A. To be honest, I can't remember.

22 Q. Okay. And what is your current job title?

23 A. I am the director of Facilities Services.

24 Q. And how long have you had that title?

25 A. About nine years.

1           Q.       What does the director of Facilities Service  
2 do?

3           A.       I am responsible for the maintenance and  
4 construction activity at the -- at the main campus and at  
5 the Forsyth hospital.

6           Q.       Okay. And how old are you?

7           A.       I am 46 years old.

8           Q.       Are you currently married?

9           A.       No.

10          Q.       Have you been married in the past?

11          A.       Yes.

12          Q.       How many times?

13          A.       Twice.

14          Q.       It's my understanding that you were a  
15 decision maker in the decision to terminate Mr. Burnette,  
16 is that right?

17          A.       That's correct.

18          Q.       Who else was involved in that decision?

19          A.       The director of Human Resources, Bridget  
20 Green; it was discussed with the vice president of  
21 Support and Clinical Services, Dwight Hill.

22          Q.       What was your reason for terminating  
23 Mr. Burnette?

24          A.       Job abandonment.

25          Q.       How had he abandoned his job?

1           A.           He was told on Friday, May 16th, that he was  
2           -- he and Cameron were to report to the Atlanta campus  
3           that following Monday.

4           Q.           Who made that decision to -- is it a  
5           reassignment?

6           A.           Yes.

7           Q.           You would call it a reassignment?

8           A.           Yes.

9           Q.           Who made the decision to reassign them to  
10          the Atlanta campus?

11          A.           I did.

12          Q.           Anyone else?

13          A.           It was in conjunction and discussion with  
14          the director of Human Resources, Bridget Green.

15          Q.           Bridget Green wanted them reassigned as  
16          well?

17          A.           She had had discussions with me about  
18          options of how to handle the situation.

19          Q.           Okay. So are you saying that --

20          A.           It was my -- it was my decision.

21          Q.           Okay. It was your decision to reassign  
22          them, right?

23          A.           Yes.

24          Q.           And you're saying you talked it over with  
25          her first?

1           A.           Yes.

2           Q.           And she agreed?

3           A.           She agreed that that was a valid and  
4           probably a good option.

5           Q.           What analysis had you done prior to your  
6           decision to reassign Mr. Burnette and Cameron as to the  
7           needs of the Atlanta facility to have them down there?

8           A.           It wasn't so much a matter to have them down  
9           there as addressing a situation that I had experienced  
10          previously with Ray and Cameron, and the need to try to  
11          have them see the kind of structure and atmosphere that I  
12          was trying to establish in Forsyth because I had recently  
13          taken over the Forsyth campus after the purchase of  
14          Baptist Medical Center.

15          Q.           Okay. Anything -- how about -- let me make  
16          sure I've asked this question: What was the purpose of  
17          the reassignment? Is that what you just said?

18          A.           The purpose was, like I said, from based on  
19          the experience that I had had, which was a meeting that  
20          took place previous to that -- I believe it was a few  
21          weeks previous to that -- and also subsequent  
22          conversations with his manager, Paul, as to things that  
23          had transpired since that meeting.

24          Q.           Could you be more specific?

25          A.           Yes. It was a very hostile environment

1 Q. And so this is the first time you'd ever met  
2 them?

3 A. Well, I had met them in the hallway, yeah.

4 Q. Okay. This was the first meeting you'd ever  
5 had with them, right?

6 A. That's correct.

7 Q. And in this meeting all of this anger by  
8 these two gentlemen came out?

9 A. Yes.

10 Q. Do you know why -- what they were angry  
11 about?

12 A. I'm not sure if I can pinpoint one reason,  
13 but I can tell you they were angry that Paul was hired;  
14 they -- they made that very clear. They said Paul was --  
15 I don't remember the exact words, but basically  
16 incompetent. They were very angry that Larry was  
17 replaced. Larry was a temporary fill-in, which Lynn  
18 Jackson had requested his assignment back in September  
19 prior to the purchase of the hospital, so in other words,  
20 Lynn Jackson, who has been the administrator for Baptist  
21 had called Dwight Hill, my boss, asked him for help  
22 because Ken Royals, the former director, was leaving.  
23 And at that point we had sent Larry up, I believe, it was  
24 either September or early October, it could have been  
25 even August prior to the purchase.



1 Q. Larry Castleberry?

2 A. That's correct.

3 Q. Okay. You sent him up -- you sent him up to  
4 Cumming?

5 A. To Cumming.

6 Q. Okay. And what --

7 A. Upon Lynn Jackson's request.

8 Q. Okay. And what were they upset about with  
9 Larry? You said Larry was replaced?

10 A. Yes. They thought that Larry was a better  
11 manager. Larry was an acting manager.

12 Q. So they were upset that Paul Schempp had  
13 replaced Larry Castleberry?

14 A. That was one of the reasons they were upset,  
15 yeah.

16 Q. Okay. Anything else they were upset about?

17 A. They were upset about -- that meeting was, I  
18 believe, May 7th, so they were upset also about the call  
19 pay.

20 Q. What were they upset about in the call pay?

21 A. They were upset because I had instructed  
22 Paul Schempp sometime on or around April 1st to make sure  
23 that he had conversation with both Ray and Cameron that  
24 they were no longer going to receive call pay.

25 Q. Why did that upset them?

1           A.       Because they weren't being compensated, they  
2       were losing money.

3           Q.       So was there a change in their compensation?

4           A.       Yes.

5           Q.       What was that change?

6           A.       They no longer received call pay.

7           Q.       Why were they no longer receiving call pay?

8           A.       Because, like I said, before when Northside  
9       Hospital purchased Baptist back in October I had been  
10      informed that I was going to take over the department, so  
11      like I do, I start checking into things and one of the  
12      things that I discovered is that everybody in the  
13      department was receiving call pay. In the main campus  
14      where I have 30-some employees I don't do it that way, I  
15      only give call pay to my managers and supervisors --  
16      and/or supervisors. They weren't managers and/or  
17      supervisors, and I interpreted call pay as compensation  
18      that is for being available to handle situations after  
19      their normal work hours as opposed to overtime, which  
20      other employees, if my managers or supervisors for some  
21      reason call their employees to perform a task, then those  
22      employees, if they come in, would be compensated through  
23      overtime.

24          Q.       But not call pay?

25          A.       Correct.

1 policy practice.

2 Q. All right. To the best of your memory now,  
3 I want you to tell me all the people, these other people,  
4 that Ray and Cameron involved in their complaints, okay.  
5 Now, you've told us about Teresa Collier --

6 A. Right.

7 Q. -- and that's one.

8 A. Right. And I believe Sarah Cummings was  
9 one.

10 Q. Sarah Cummings is two.

11 A. Right. And I believe Larry Castleberry was  
12 three.

13 Q. Larry Castleberry is three. Who else?

14 A. Ray's wife. I'm not sure when Bridget got  
15 involved. I know that Bridget had spoken to Ray, but I  
16 believe it was closer to the middle to end of May that  
17 that happened.

18 Q. In your job title as a director --

19 A. Yes.

20 Q. -- how do you compare to say, Bridget Green?

21 A. She'd be my peer. She's --

22 Q. Peer, equal?

23 A. Yes.

24 Q. She's not like a higher rank or anything, in  
25 the military. And Sarah Cummings, she'd be a subordinate

1 of some sort to you?

2 A. Yeah, she works for Bridget.

3 Q. So she's not a director, or at that level?

4 A. No.

5 Q. And then Teresa would be farther on down?

6 A. I'm not sure if Teresa is farther down than  
7 Sarah or not.

8 Q. Okay. Who is Bridget Green's supervisor?

9 A. Dwight Hill.

10 Q. Dwight Hill. And he is the vice president?

11 A. Yes.

12 Q. Was Mr. Hill involved as one of these other  
13 people, by Ray and Cameron?

14 A. I don't believe Mr. Hill was contacted by  
15 Ray and Cameron, he was contacted by me at one point.

16 Q. About what?

17 A. You know, the situation, consulting me on  
18 the situation with Ray and Cameron, and my experience  
19 from the time that I had the meeting, which I believe was  
20 May 7th, till -- actually, I believe I met with -- with  
21 Mr. Hill and Bridget May 7th -- and I'm not sure when we  
22 met, it was April 29th, something like that.

23 Q. April 29th you contacted Dwight Hill about  
24 Ray and Cameron?

25 A. Sometime around the -- sometime between the

1 2nd and 5th of May I contacted actually Dwight to have a  
2 meeting with Bridget, Dwight, and myself to discuss the  
3 situation.

4 Q. What situation?

5 A. Well, the situation both I was -- the letter  
6 that Human Resources had -- had written.

7 Q. One of the documents we're talking -- you're  
8 talking about?

9 A. Correct.

10 Q. Okay.

11 A. And also just the -- the background on what  
12 was taking place in my department up there since my  
13 meeting with the four guys; Ray, and Paul, and Cameron,  
14 and myself.

15 Q. So in this meeting you had with Dwight and  
16 Bridget to discuss the situation, did you discuss Ray and  
17 Cameron's bad attitude?

18 A. Yes.

19 Q. And did you discuss their anger, I guess,  
20 over being denied call pay in the future?

21 A. I -- I don't know if I did or not. I  
22 discussed the general experience, and I can't truthfully  
23 say that I remember all the details that we discussed. I  
24 know, again, one of the things that was discussed was the  
25 letter itself because I was upset about the letter; I

1       disagreed with how it took place and that I wasn't  
2       contacted or communicated with, and Bridget had explained  
3       to me that it was a process that they just go through and  
4       that she doesn't get involved, and it was a report  
5       basically that her people create after having  
6       conversation with the, you know, the people. And I was  
7       upset because I felt that it would be appropriate that  
8       she had at least notified Sarah and Teresa that, you  
9       know, that I was aware of the situation, and that I  
10      didn't feel, you know, I knew that they were -- that they  
11      were going -- basically going after Paul, and I didn't  
12      feel that Paul was where the problem lied, based on my  
13      experience in the meeting. And so that was part of the  
14      meeting too, it was just trying to -- because Dwight is  
15      over Human Resources also -- he's also over me -- I felt  
16      that it would be appropriate to just have a discussion to  
17      make sure that he agreed with everything Human Resources  
18      was doing and also was made abreast of what I was  
19      experiencing.

20           Q.       What upset you about the letter?

21           A.       The recommendations, and the fact that they  
22      didn't contact me and talk to me prior to having  
23      discussions with them to get, you know, the other side of  
24      the story. And Bridget assured me that she normally  
25      didn't do that, and I didn't think that was right.

1           Q.       Did she explain to you why she normally  
2       didn't contact someone such as yourself?

3           A.       She just said that it was a process that  
4       when people filed a grievance that she would send people  
5       up and talk to them individually, which apparently that  
6       didn't happen. They apparently talked in more than one  
7       on -- Human Resources, I understand that they spoke with  
8       Ray and Cameron together. But yeah, she just explained  
9       that that was a process on a grievance that typically she  
10      didn't notify anyone until after the fact, which is what  
11      she did for me.

12          Q.       Now, she did talk to Paul as part of her  
13      investigation, didn't she?

14          A.       I don't believe she did. Well, yeah, when  
15      she went up I believe she did, she spoke to Larry, and to  
16      Paul, and to Ray, and Cameron.

17          Q.       So what would you have added to her  
18      investigation to have changed her mind?

19          A.       I would have informed her that what I  
20      experienced in the meeting, and to let her know that I  
21      didn't feel that Paul was the issue, but that I felt that  
22      the employees, in particular Ray and Cameron, were the  
23      problem here.

24          Q.       It wasn't -- Paul wasn't the problem, it was  
25      Ray and Cameron?

1 consider that borderline insubordination.

2 Q. Oh, I misunderstood you earlier. I thought  
3 you had said that. That's not what you said?

4 A. No, I said that some of the comments that  
5 were made by Larry were borderline insubordination.

6 Q. Okay. Tell me all the comments  
7 Mr. Castleberry made in that first meeting that were  
8 borderline insubordination of which you informally  
9 reprimanded him for.

10 A. Can I have the chance to think about it?

11 Q. Absolutely.

12 A. Okay. He made comments to the effect about  
13 how -- how these guys -- I'm sorry, I -- I can't remember  
14 the details.

15 Q. It's my understanding Mr. Castleberry was  
16 supportive of both Ray and Cameron in that meeting, was  
17 he not?

18 A. Somewhat, yes.

19 Q. And that bothered you?

20 A. What bothered me is when I saw Ray sitting  
21 there, standing up red in the face swearing and pointing  
22 his finger at his manager, and Cameron doing similar  
23 acts, and then their previous manager sitting there and  
24 supporting them, that's what bothered me.

25 Q. Okay. Let's switch gears here to the hiring



1 of Mr. Schempp.

2 A. Okay.

3 Q. Who made the decision to hire Mr. Schempp?

4 A. I did.

5 Q. By yourself?

6 A. Yes.

7 Q. How many other applicants applied for  
8 Mr. Schempp's position?

9 A. I couldn't tell you.

10 Q. Well, how many other applicants did you look  
11 at?

12 A. Probably three or four.

13 Q. How long have you known Mr. Schempp?

14 A. I have known Paul about maybe seven years.

15 Q. How did you know him?

16 A. He was a property manager for Cousins, who  
17 manages our -- most of our medical office buildings.

18 Q. Now, I've heard rumors, I guess, that  
19 Mr. Schempp was actually hired for his job prior to the  
20 posting of the job, is that true?

21 A. I couldn't tell you. I -- I'd find that  
22 hard to believe.

23 Q. When was Mr. Schempp's position posted in  
24 the Cumming facility?

25 A. In the Cumming facility, I couldn't tell

1 hospital policy was on job posting.

2 Q. You didn't know what the policy was on  
3 postings?

4 A. Well, no, I didn't because -- I mean I do at  
5 the main campus, but like you had clearly indicated that  
6 they're in Forsyth and they had indicated to me that the  
7 job wasn't posted in Forsyth.

8 Q. In that first meeting, did Ray or Cameron  
9 use the words -- or did they tell you that they felt they  
10 were discriminated against because Paul's job had not  
11 been posted?

12 A. Not to my knowledge, no, not to my  
13 recollection.

14 Q. Did they explain to you why they were angry  
15 or upset about not posting the position?

16 A. Other than clearly stating that they felt  
17 Paul Schempp was unqualified, no.

18 Q. So that was a contentious meeting. I mean  
19 here you are the subordinates telling their supervisor  
20 he's -- that guy there is not qualified.

21 A. Right.

22 Q. That seems to be a contentious meeting.

23 A. It was very contentious.

24 Q. At the -- that first meeting did you think  
25 they had a legitimate complaint or grievance about not

1 posting the position?

2 A. Oh, about posting. It's not my -- I mean I  
3 -- I told them I would go check into job postings and  
4 find out when jobs were posted, you know, and find out  
5 more about it.

6 Q. And what did you ever find out about it?

7 A. I did find out that the job was posted at  
8 the main campus. I also do recall having conversation  
9 with someone, and I believe it was Terry McCaullick, or  
10 McCauley, in Human Resources, to verify that the job was  
11 properly posted.

12 Q. Up here in Cumming?

13 A. No. As it turned out, I never did find out  
14 whether it was posted here in Cumming, but I did find out  
15 that it wasn't required to be posted in Cumming, that the  
16 official job posting board was at the main campus.

17 Q. So there's no official job posting board  
18 here in Cumming?

19 A. I don't know.

20 Q. All right. Well, explain that to me. You  
21 said you found out that the right place to post it was  
22 down in Atlanta, I guess, right?

23 A. Yes.

24 Q. But there's no place up here in Cumming for  
25 that?

1           A.           I don't know.

2           Q.           So based upon this conversation with Terry  
3   McCauley, you believe that it was not required to have  
4   been posted here in Cumming?

5           A.           No. Based on the conversation with Bridget  
6   Green, upon my inquiry about what our policy was for job  
7   posting, she informed me that it was not required to post  
8   positions in Forsyth campus, that the main job posting  
9   was on the Atlanta campus.

10          Q.           Did she tell you the reason for the  
11   difference?

12          A.           No.

13                               (Whereupon, the court reporter  
14                               marked Plaintiff's Exhibit No. 1  
15                               for identification.)

16          Q.           Let me show you what's been marked as  
17   Plaintiff's Exhibit 1. This is that grievance -- the  
18   first grievance we've been talking about, and it's signed  
19   by Mr. Burnette here on or about April 16th, 2003.

20          A.           Uh-huh (affirmative).

21          Q.           It's a Northside Hospital Grievance Form.  
22   Have you seen this document before?

23          A.           I have not. I don't believe that I have.

24          Q.           Were you aware that Mr. Burnette had filed a  
25   written grievance on or about April 16th, 2003?

1           A.           But is April 16th after? I believe this  
2 might have been before.

3           Q.           That's what I'm asking, if you know.

4           A.           This -- this was filed before. I didn't  
5 meet with them before April 16th.

6           Q.           Okay. Okay. Look at subpart two there  
7 about -- see where it says standby call time?

8           A.           The first page?

9           Q.           First page, it's 2 and it's circled.

10          A.           Yeah. Uh-huh (affirmative).

11          Q.           Mr. Burnette wrote: Standby call time taken  
12 away without notice. We were told we are no longer  
13 eligible because we are hourly employees. We were told  
14 he would then call us to come in when there was a  
15 problem, and if we did not come in we could face  
16 disciplinary action. This is against hospital for  
17 on-call pay. Do you remember this particular grievance  
18 coming up in a meeting prior to it being written down?

19          A.           Prior to April 16th?

20          Q.           Prior to April 16th.

21          A.           No.

22          Q.           Okay. So when is the first time you became  
23 aware of this particular written grievance about standby  
24 call pay?

25          A.           April 29th.

1           Q.       And that April 29th, again, was the meeting  
2       you had with whom?

3           A.       That was when I received the --

4           Q.       The memo?

5           A.       The memo.

6           Q.       Okay. Did you tell Mr. Schempp that either  
7       Ray or Cameron could face disciplinary action for not  
8       returning calls when they were called about standby?

9           A.       No.

10          Q.       You did not?

11          A.       No.

12          Q.       Never?

13          A.       (Witness shakes head negatively.)

14          Q.       What conversations have you had with  
15       Mr. Schempp about standby call pay and the changes that  
16       you were making?

17          A.       Again, I had instructed Lynn Jackson, the  
18       administrator for Baptist Hospital, sometime around  
19       October that I wanted to eliminate call pay to the  
20       nonsupervisory employees as I do here in -- or in the  
21       Atlanta campus. She informed me that I couldn't do that  
22       because part of the purchase agreement was that the  
23       compensation packages not be changed for six months from  
24       the date of purchase.

25          Q.       And that was October 1st, 2001?

1 A. Sometime --

2 Q. Or '02?

3 A. -- October, November, possibly December, but  
4 it was several months prior to April.

5 Q. So what would have that deadline have been  
6 when you were allowed to make changes --

7 A. April 1st.

8 Q. -- after six months? April 1st?

9 A. Yes.

10 Q. Okay. I'm sorry. Continue.

11 A. So -- so Lynn Jackson, who was then their --  
12 they were direct report to -- to Lynn, was notified that  
13 I was going to take that action; Larry Castleberry was  
14 also notified at that time or shortly thereafter that  
15 that was the action I was going to take. And then it  
16 didn't come up until -- and of course I believe Paul was  
17 hired sometime in either February or -- late February or  
18 early March. I probably had that conversation with him  
19 before April 1st. But sometime around April 1st,  
20 possibly late March, I had contacted Paul and reminded  
21 him, or informed him that I was going to eliminate call  
22 pay for Ray and Cameron, effective the pay period after  
23 April 1st.

24 Q. Why just Ray and Cameron?

25 A. Because they are the

1 nonsupervisory employees.

2 Q. What was Mr. Castleberry's job title?

3 A. Chief engineer.

4 Q. Was he a supervisory employee?

5 A. He was a chief engineer, so Larry's received  
6 call pay for as long as I've been in the job, and  
7 continued to receive it when he went to Forsyth.

8 Q. So why did he receive it if he was a  
9 nonsupervisor?

10 A. Well, he was a chief engineer. Again, my  
11 call pay is based on -- the policy for call pay is based  
12 on employees who you feel are -- have the necessary  
13 skills to handle whatever situation might, in my -- in my  
14 situation for central energy plant I use call pay for  
15 people who I can depend on to deal with in crisis  
16 situations, so it's not necessarily supervisory, but the  
17 chief engineer and that particular -- in my particular  
18 situation I felt was eligible for call pay and --

19 Q. So it had nothing to do with being a  
20 supervisor?

21 A. I don't believe the policy states that it  
22 has anything to do with a supervisor. It -- it does  
23 spell out what kind of employee should be, and department  
24 should be eligible for call pay.

25 Q. So you're aware of the policy of -- for call



1 pay, who gets it and who shouldn't?

2 A. I have looked at the policy, yeah. Uh-huh  
3 (affirmative).

4 Q. Would you agree with me that the policy  
5 allows for call pay for people like Ray and Cameron when  
6 they're called?

7 A. I don't believe that I could answer that. I  
8 mean it's a -- it's kind of a department specific. I  
9 think the call pay policy is developed to establish that  
10 everybody shouldn't be eligible for call pay; that  
11 certain needs of the business would dictate that -- that  
12 need and that the department, you know, is discretionary  
13 for the department, I believe.

14 Q. Your discretion?

15 A. Well, it doesn't say it's manager's  
16 discretion, but yes, it would turn out to be  
17 discretionary to me.

18 Q. Let's see. The same place I had just read  
19 you --

20 A. Uh-huh (affirmative).

21 Q. -- one of Mr. Burnette's complaints was: We  
22 were told he would then call us to come in when there was  
23 a problem, and if we did not we could face disciplinary  
24 action.

25 A. Uh-huh (affirmative).

1           Q.       Is that -- is that a legitimate grievance,  
2 in your opinion?

3           A.       It is.

4           Q.       Why?

5           A.       However, I would like to say that I don't  
6 know these dates, it was so long ago, but I believe that  
7 by the time he had written this grievance it had already  
8 been clarified. There was a one-day time frame in which  
9 Paul -- and it was close to sometime around April 1st  
10 that Paul had talked to Ray and Cameron and told them  
11 that they were no longer going to receive call pay. And  
12 I think there was some follow-up questions by Ray and  
13 Cameron and Paul misinterpreted what I had said and  
14 misinformed them that they were subject to disciplinary  
15 action if in fact they were not available after their  
16 working hours.

17          Q.       All right. Go back to my question. It is a  
18 legitimate grievance, isn't it?

19          A.       What was your question?

20          Q.       Well, it's the statement I just read you.

21          A.       I don't remember it. Could you repeat it,  
22 please?

23          Q.       Quote: We were told he would then call us  
24 to come in when there was a problem, and if we did not we  
25 could face disciplinary action.

1 A. Yes.

2 Q. That is a legitimate grievance by  
3 Mr. Burnette, wasn't it?

4 A. Yes.

5 Q. Why was it a legitimate grievance?

6 A. Because they're -- if they're not receiving  
7 call pay, then they're not subject to disciplinary action  
8 to not be hanging around to wait on calls.

9 Q. Okay. So if Mr. Schempp -- and apparently  
10 he did mistakenly tell them this, right? You will be  
11 disciplined if you don't respond, right?

12 A. That's my understanding.

13 Q. Okay. And that was his mistake?

14 A. Yes.

15 Q. So his mistake created this grievance, I  
16 guess?

17 A. I don't believe so. I'm sure that that  
18 mistake was corrected the following day. I'm sure of it.

19 Q. His mistake created this threat to Ray and  
20 Cameron?

21 A. Well, again, you know, I'd have to look at  
22 the dates to find out because if this was written April  
23 16th, I'm not sure when that 24-hour period was, if it  
24 was prior to the 16th or after the 16th. It clearly was  
25 prior to it, and I see that Ray didn't, you know, explain

1       that, you know, it was a 24-hour misunderstanding.

2             Q.       So this was a 24-hour threat, I guess?

3             A.       Well, it was a 24-hour misunderstanding.

4             Q.       Okay.

5             A.       They asked a question, and he said if you  
6       don't answer the phone, or something to the effect that,  
7       you know, that if you didn't answer the phone after your  
8       hours, and you were there, that you would be subject to  
9       discipline at that -- at that -- that day. And I can't  
10      remember if he called me or I called him, but we had a  
11      conversation and I said no, that's not right, Paul, you  
12      need to go and tell them that that's not true, that  
13      they're not required to -- to be available, and they, you  
14      know, are not subject to disciplinary action if in fact  
15      they don't answer.

16            Q.       So this phone conversation --

17            A.       Yeah.

18            Q.       -- that you had with Mr. Schempp wherein you  
19      corrected --

20            A.       Uh-huh (affirmative).

21            Q.       -- his mistake --

22            A.       Yeah.

23            Q.       -- that happened prior to this memo you  
24      received from Human Resources?

25            A.       Sure. It would have been sometime around

1 April 1st. That memo was sometime around April 29th.

2 Q. So you corrected Mr. Schempp's mistake two  
3 weeks prior to this written grievance?

4 A. Approximately.

5 Q. Approximately fifteen days?

6 A. Well, I -- again, assuming that April 1st  
7 was the day that they were informed.

8 Q. Now, let me see if I can put some flesh and  
9 bones, I guess, on this legitimate grievance as to why  
10 it's a legitimate grievance, in your opinion. Is it  
11 because Ray and Cameron would have been on call twenty-  
12 four hours a day, seven days a week, and possibly have  
13 been disciplined for not responding to a call, but yet  
14 receive no compensation for being on call, is that what's  
15 wrong with this mistake of Mr. Schempp's?

16 A. No, what was wrong is he made a mistake and  
17 as soon as he, within a 24-hour period, discussed it with  
18 me, went back and made the correction.

19 Q. All right. Well, then, why did you have to  
20 correct it? What would have been wrong about it from a  
21 -- an hourly pay standpoint, I guess?

22 A. Because people who receive call pay are  
23 compensated for being available after the 40 hours a week  
24 that they work. People who don't receive call pay are  
25 frequently called to come in to do tasks, and if they are

1 home and they pick up the phone, and they agree to come  
2 in, they're compensated through overtime.

3 Q. But not call pay?

4 A. Not call pay.

5 Q. Okay. On the third paragraph here,  
6 Mr. Burnette wrote: The threat of disciplinary action  
7 was made to Cameron Edwards, but was regarding both  
8 Cameron and myself, on Tuesday, April 1st. Is that the  
9 day you were looking for?

10 A. That's -- that would be probably about  
11 right.

12 Q. Okay. And so within a -- the day of  
13 Tuesday, April 1st, you had corrected Mr. Schempp's  
14 mistake?

15 A. Yes.

16 Q. And to your knowledge, Mr. Schempp  
17 immediately corrected his mistake to --

18 A. Yes.

19 Q. -- Ray and Cameron?

20 A. He told me that he had. And I also believe  
21 that Ray and Cameron have had conversations with Human  
22 Resources, which also confirmed what I had said.

23 Q. When?

24 A. Sometime between April 1st and April 29th.

25 Q. It's your understanding that Ray and Cameron

1 result of the Human Resources investigation?

2 A. Yes.

3 Q. And you got a copy of this, I guess?

4 A. Yes, I did.

5 Q. When did you receive a copy of -- of this  
6 memo?

7 A. Shortly after April 29th, possibly -- what  
8 day is the 29th, was it a Monday, Tuesday?

9 Q. I'd have to get a calendar.

10 A. I believe it was the following day.

11 Q. So you think you got a copy of this document  
12 about April 30th, '03?

13 A. Yes.

14 Q. And after you read this Memorandum, were you  
15 upset about the results of this investigation?

16 A. Yes.

17 Q. And is that what you were talking about  
18 earlier, you were upset because it was kind of a one-  
19 sided investigation, I guess?

20 A. Yes.

21 Q. What else about this memo upsetted you --  
22 upset you? Have you had a chance to -- to look at --  
23 look it over at all?

24 A. Yeah. In particular, again, it was that the  
25 -- the fact that I wasn't aware of the grievance process

1 and what took place, and also that I wasn't contacted as  
2 a second party to get, you know, my side of the story,  
3 and also the recommendations that were made.

4 Q. Okay. How would you have changed their  
5 opinion, I guess, in their investigation about their  
6 recommendation somehow?

7 A. I didn't want to change their opinion, I  
8 just wanted to let them know that I was currently trying  
9 to resolve a situation that -- that I felt much  
10 differently about than Ray and Cameron did.

11 Q. Okay. Now, at this point on or around April  
12 29th or April 30th, possibly, when you received this, had  
13 you gotten back to Ray and Cameron about their complaints  
14 about the failure to post the position yet?

15 A. I did through Paul.

16 Q. So you told Paul to tell them what the  
17 results of your investigation were about the failure to  
18 post complaints?

19 A. I believe that's correct.

20 Q. And what did you tell him to tell them?

21 A. That I had spoken to the director of Human  
22 Resources and that it wasn't required to post positions,  
23 except on the official job board, which was at the  
24 Atlanta campus.

25 Q. All right. Based upon this Memorandum, did



1           A.           This letter made me angry.

2           Q.           I'm not talking about the letter now, I'm  
3 talking about this -- this point, this sentence. It made  
4 you angry, didn't it?

5           A.           Not -- not individually. I mean the letter  
6 made me angry.

7           Q.           Okay. Well, based upon this recommendation,  
8 did you follow it?

9           A.           No.

10          Q.           Why not?

11          A.           Because, again, I didn't agree with the fact  
12 that the grievance form didn't allow Sarah and/or Teresa  
13 to talk to the -- to the management side, and -- and I  
14 felt that the recommendations were way off base, that  
15 they were just based on, like I said, it was a discovery,  
16 what's your problem, and it sounds like they wrote down,  
17 and that's what Bridget had said is that they made  
18 recommendations based on the conversations that they had  
19 with Ray and Cameron.

20          Q.           You thought Sarah was simply parodying what  
21 Ray and Cameron wanted?

22          A.           Yes.

23          Q.           All right, so -- well, you -- anyway, you  
24 don't institute this first recommendation?

25          A.           No.

1           Q.       Instead, you go to -- farther up the chain  
2 of command and talk about it with whom?

3           A.       Bridget Green.

4           Q.       Bridget Green, as well as Dwight Hill?

5           A.       Eventually, yes.

6           Q.       And this recommendation was not followed,  
7 was it?

8           A.       No, it wasn't.

9           Q.       Why wasn't it followed after you were  
10 speaking with Dwight Hill or Bridget Green?

11          A.       I'm not sure that this document was ever  
12 seen by Dwight Hill. And it wasn't discussed in the  
13 meeting, other than that Bridget's people had written a  
14 letter that I was very angry about, and had subsequent  
15 meetings with Bridget discussing this particular letter.

16          Q.       Did she explain to you why she thought call  
17 pay should be reinstated?

18          A.       Bridget?

19          Q.       Bridget.

20          A.       No.

21          Q.       Did Sarah ever explain to you?

22          A.       No.

23          Q.       Did they ever change their mind about their  
24 recommendation in any way?

25          A.       I have no idea.

1           Q.       Well, then why didn't you follow the  
2 recommendation?

3           A.       Because it's not their decision to make.  
4 It's a recommendation from Human Resources; it's my  
5 decision to make.

6           Q.       So it's a recommendation from Human  
7 Resources after their investigation, which you aren't  
8 required to follow?

9           A.       It's a recommendation from Sarah Cummings  
10 and/or Teresa Dawson, not from Human Resources.

11          Q.       So is your testimony that Bridget Green did  
12 not support these recommendations?

13          A.       I believe we never had -- I never asked her  
14 directly whether she supported those recommendations.

15          Q.       Did this recommendation, or any of these  
16 recommendations, ever come up in a Board meeting?

17          A.       I have no idea.

18          Q.       You don't sit in on Board meetings?

19          A.       No.

20          Q.       Did this recommendation, or any of these  
21 recommendations, ever come up in your meeting with Dwight  
22 Hill?

23          A.       I don't believe individually, no.

24          Q.       Who explained to you that you were not  
25 required to follow this first recommendation?

1 A. I believe it was Bridget Green.

2 Q. What did she say?

3 A. She just said this is a grievance process  
4 and this is how we do grievance processes.

5 Q. So would you agree with me that this  
6 grievance process apparently, as unfair as it may seem to  
7 you, validated Ray and Cameron's complaint about call  
8 pay?

9 A. Could you repeat the question?

10 Q. Would you agree with me that this -- this  
11 recommendation, this first line here, that it validated  
12 their complaint?

13 A. No.

14 Q. Why not?

15 A. Because I told you, I have call pay at the  
16 main campus for my specific people, and I was trying to  
17 get the Forsyth campus in line with that particular --  
18 with the way I structure my department in Atlanta.

19 Q. Now, it's my understanding that the  
20 Engineering Department in Atlanta is there in three  
21 shifts, 24 hours a day, is it not?

22 A. Yes.

23 Q. There's no such three shifts, 24 hours a day  
24 up in Cumming, is there?

25 A. No.

1 Q. Okay.

2 A. And it was with people, and so I believe we  
3 were introduced, but that meeting, I believe, was the  
4 first time that we sat down.

5 Q. On May 16th?

6 A. No, that's not true.

7 Q. There was a prior meeting to that --

8 A. Right.

9 Q. -- wherein you observed the -- the angry  
10 behavior --

11 A. Right.

12 Q. -- by Cameron and Ray?

13 A. That was around the end of April, right?

14 Q. Well, I don't know.

15 A. I believe that was around April 29th.

16 Q. Okay. So this would have been the second  
17 meeting that you had?

18 A. This was the meeting -- the 16th you're  
19 talking about?

20 Q. Right.

21 A. Yes.

22 Q. And Cameron was not present on May 16th, was  
23 he?

24 A. No.

25 Q. Okay. When did -- prior to this meeting,

1           A.       Yes.

2           Q.       And that was prior to your decision to  
3 terminate him, right?

4           A.       Yes.

5           Q.       And he was not accepting this transfer is  
6 the way I understood it, and I guess the way you  
7 understood it?

8           A.       That's what this letter says.

9           Q.       And based upon his refusal to accept the  
10 transfer, was that the sole reason you terminated him?

11          A.       No.

12          Q.       Were there other reasons you terminated him?

13          A.       Yes.

14          Q.       Tell me all the reasons that you terminated  
15 him.

16          A.       I terminated him to -- all the reasons?

17          Q.       All the reasons.

18          A.       Well, the reason I used on the termination  
19 slip was job abandonment.

20          Q.       Anything else? Sometimes we don't write  
21 down all the reasons, right, do we, for somebody's  
22 termination? And you had something else other than job  
23 abandonment to terminate him for, didn't you?

24          A.       Well, like I said, I thought that Ray was  
25 insubordinate, disrespectful.

1           Q.       So my question is: What were all the  
2 reasons you terminated Mr. Burnette for? If you could  
3 list them for me.

4           A.       Job abandonment.

5           Q.       Okay, that's one. What else?

6           A.       And that's -- that's it.

7           Q.       There were no other reasons?

8           A.       Well, I mean the main reason that I  
9 terminated him, which was your question, was job  
10 abandonment.

11          Q.       Okay. So that's the main reason?

12          A.       That is the reason.

13          Q.       That's the only reason?

14          A.       Yeah.

15          Q.       Okay. So you weren't terminating for --  
16 terminating him for his bad attitude, were you?

17          A.       No.

18          Q.       You weren't terminating him because he had  
19 previously been insubordinate in any way?

20          A.       No.

21          Q.       And you certainly weren't terminating him  
22 because he had been disrespectful in the past?

23          A.       That's correct.

24          Q.       And you didn't terminate him because he had  
25 a bad attitude?

1 Q. Okay.

2 A. So we've had several meetings with several  
3 different topics to take place in the Board Room.

4 Q. Okay.

5 A. If you're talking about Board meetings where  
6 the Board of Directors meet, I don't usually attend those  
7 meetings.

8 Q. Okay. In the Board Room --

9 A. Yes.

10 Q. -- have you ever discussed Ray or Cameron's  
11 employment in any way whatsoever?

12 A. No, I have not.

13 Q. When you spoke with the vice president --  
14 what's his name again?

15 A. Dwight Hill.

16 Q. Dwight Hill. Who was present at the -- was  
17 there only one meeting with Dwight Hill you had about Ray  
18 and Cameron?

19 A. To the best of my recollection, there was  
20 only one meeting where we met with Bridget.

21 Q. So all the people present in the meeting  
22 about Ray and Cameron would have been Dwight Hill and  
23 Bridget?

24 A. That's correct.

25 Q. And yourself?



1 A. Yes.

2 Q. Anybody else?

3 A. No.

4 Q. In this meeting with Mr. Hill and Bridget,  
5 was that where she suggested the -- the transfer?

6 A. That was one of the suggestions.

7 Q. Okay. So Mr. Hill would have been there to  
8 -- to hear her suggestion?

9 A. Yes.

10 Q. Okay. I'm going over some of my notes here.  
11 Did you say that you were upset that the Plaintiff or  
12 Cameron had gone to Human Resources?

13 A. Gone to Human Resources, no.

14 Q. Were you upset that they had filed a  
15 grievance?

16 A. No. I mean I wasn't -- I wasn't thrilled.  
17 I don't know. I supposed I was a little upset that they  
18 filed a grievance without coming to -- to the chain of  
19 command.

20 Q. All right. The chain of command. The chain  
21 of command. Have you ever told that to anybody?

22 A. Yeah, in the -- in the meeting we discussed  
23 the organization. I believe I even brought up org charts  
24 and --

25 Q. On the -- the May 16th meeting --

1 (Whereupon, the court reporter  
2 marked Plaintiff's Exhibit No. 5  
3 for identification.)

4 Q. I'll show you what's been marked as  
5 Plaintiff's Exhibit 5.

6 A. Uh-huh (affirmative).

7 Q. Plaintiff's 5 is a document with your  
8 signature, I believe --

9 A. Yes.

10 Q. -- dated May 22nd, 2003, the day after the  
11 document we just talked about, right?

12 A. Yes.

13 Q. And you wrote to Mr. Burnette: Please be  
14 advised that your employment has been terminated  
15 effective May 22nd, 2003, for failure to report to work.  
16 Right?

17 A. Yes.

18 Q. Is that any different from job abandonment?

19 A. No.

20 Q. Same thing?

21 A. Yeah. Failure to report to work, job  
22 abandonment.

23 Q. Same thing? Because earlier you told me  
24 that it was job abandonment, so I want, you know, is it  
25 the same thing or not?

1           Q.       What was your involvement in getting Mr. Syi  
2 a position working under Tim Popadics?

3           A.       Nothing, other than to explain to Tim  
4 Popadics that he was looking for a job.

5           Q.       And how do you know Mr. Syi?

6           A.       He is my daughter's -- my granddaughter's  
7 father.

8           Q.       Okay. I apologize beforehand for the  
9 intrusive questioning, but it's sort of a part of the  
10 case potentially, and that's why I'm asking, okay? I'm  
11 not here to -- to rough you up and, you know, this is a  
12 written document and never even seen the light of day  
13 possibly, so I apologize beforehand. Have you observed  
14 any performance problems with Sam in doing his job?

15          A.       I have not. I don't -- he doesn't report  
16 directly to me.

17          Q.       Do you know if Sam has ever been reprimanded  
18 in any way?

19          A.       Yes, I believe he has.

20          Q.       What are -- what are his reprimands about?

21          A.       I -- I don't know. I don't -- I don't  
22 really deal a lot with the people that work under Tim and  
23 Marty. I have about a hundred million dollars worth of  
24 construction that I keep pretty busy at.

25          Q.       Mr. Schempp told us that there was a period

1 of time Mr. Syi was not coming into work. Are you aware  
2 of that?

3 A. Mr. Schempp told you that? I wouldn't know  
4 how he would know that.

5 Q. Was there a period of time Mr. Syi did not  
6 come into work?

7 A. Could you be more specific?

8 Q. Failure to report to work.

9 A. There was a time that I'm aware of that  
10 around July 4th that he had scheduled a vacation and had  
11 left early.

12 Q. Anything else?

13 A. Just because I assumed that you were going  
14 to ask this question, I spoke with Tim Popadics yesterday  
15 about it to find out, and he did say that Sam had left on  
16 vacation early without telling Tim and -- and that it  
17 was, I believe, either one or two days before he had been  
18 contacted by Sam, and that he was, I believe, in  
19 California. And when Sam returned, Tim had given him a  
20 three-day suspension.

21 Q. Okay. So he was out of work for  
22 approximately one to two days in California without  
23 permission?

24 A. Yes.

25 Q. And because of that, he was not terminated

1 A. Yes.

2 Q. Mr. Schempp was his immediate supervisor,  
3 right?

4 A. Yes.

5 Q. It was up to Mr. Schempp to terminate Ray or  
6 not, was it not?

7 A. It's his -- it's his employee, yes.

8 Q. But in that situation, you went around  
9 Mr. Schempp's authority and personally terminated --

10 A. No.

11 Q. -- Ray, right? I'm sorry. Mr. Schempp  
12 didn't terminate him, did he?

13 A. I terminated Ray.

14 Q. Okay.

15 A. I didn't go around Paul to terminate Ray.

16 Q. Why didn't you let Paul terminate Ray?

17 A. I'm sure he could have. I was the one that  
18 told Ray to come to the Atlanta campus, and I was the one  
19 that had the conversations and the meetings with Ray and  
20 Cameron, so I thought it was appropriate that I be the  
21 one that called Ray to tell him that he had been  
22 terminated.

23 Q. In your opinion, was Mr. Burnette treated  
24 equally with Sam Syi?

25 A. In my opinion, there was two

1 Q. She was speaking out on his behalf somehow?

2 A. According to Paul she was being --  
3 soliciting others to join in on this issue.

4 Q. Which issue?

5 A. The issue that -- and again, I can't  
6 remember if it was before or after Ray was terminated, so  
7 I can't remember --

8 Q. Okay.

9 A. -- if it was call pay or his termination.

10 Q. And how did you feel about her involvement?

11 A. I didn't really have any feelings, other  
12 than it was a comment made to me and you had asked me who  
13 was involved.

14 Q. It's my understanding that Cameron did not  
15 -- did not immediately accept this transfer down to  
16 Atlanta.

17 A. That's news to me.

18 Q. Did you give Cameron additional time to go  
19 down to Atlanta?

20 A. I met with Cameron on Monday, May 19th  
21 because he was not there Friday, May 16th. I told him  
22 that he was going to be reassigned or moved, we wanted  
23 him to go to Atlanta.

24 Q. You told him he was going to be reassigned?

25 A. I told him -- I don't know what my -- I can

1       testify I don't remember what word I used. I told him I  
2       wanted him to come down and work in Atlanta for us. He  
3       had -- Carolyn Booker had attended, was present in that  
4       meeting, and he had said that he had some day care issues  
5       that he had to deal with. And I can't remember if it was  
6       discussed or decided there, but we did decide to give him  
7       a one-week or two-week grace period from transferring or  
8       relocating, or moving to the Atlanta campus.

9               Q.       So you're not sure what to call this  
10       movement of employees down to Atlanta, you don't have a  
11       -- a name in mind as to what you were calling it?

12              A.       I don't.

13              Q.       But you know it wasn't a reassignment,  
14       right?

15              A.       I do know that this Policy for Reassignment  
16       does not pertain to the particular issues that you're  
17       trying to get me to --

18              Q.       No, no.

19              A.       -- to say.

20              Q.       I want you to say that you didn't reassign  
21       it, right? You didn't reassign it, you didn't reassign  
22       the Plaintiff, Ray Burnette, in this case, did you?

23              A.       I did not reassign him --

24              Q.       Okay.

25              A.       -- to another department, no.

1 Q. Okay. So Cameron had a problem with child  
2 care and you agreed to give him two weeks to show up?

3 A. A certain amount of time.

4 Q. Why did you give him more time?

5 A. Because he asked me for it.

6 Q. On what basis?

7 A. On the basis that he had some issues that  
8 were personal and family issues that he needed to -- to  
9 deal with.

10 Q. Child care issues, right?

11 A. Yes.

12 Q. Well, those are the same concerns that  
13 Mr. Burnette had conveyed to you in that May 21st letter,  
14 wasn't it; I got child care problems?

15 A. No -- yeah, in May 21st.

16 Q. It's a day before.

17 A. It wasn't to me, it was to Human Resources.

18 Q. And you received it on May 21st --

19 A. Yes.

20 Q. -- the same day?

21 A. Yes.

22 Q. So why did you give Cameron a two-week  
23 extension to show up down in Atlanta for cross-training,  
24 and you wouldn't give Mr. Burnette a day?

25 A. Because Cameron showed up for work; Cameron



1       agreed to go to the campus; Cameron apologized for his  
2       behavior; Cameron spoke civilly and showed up and said he  
3       would come to work, but he had an issue. Ray did not.  
4       He was told and disappeared.

5               Q.       What did he apologize for his behavior  
6       about?

7               A.       Because he knew he was inappropriate.

8               Q.       Oh. What was he inappropriate about?

9               A.       By saying things that he said about me and  
10       Paul in that meeting that was sometime around April 21st.

11              Q.       Okay. And this was that contentious  
12       meeting?

13              A.       Yes.

14              Q.       Okay. What did Cameron say in that meeting  
15       that he apologized for to you? What had he said about  
16       you?

17              A.       I'm sorry, repeat the question.

18              Q.       What had Cameron said about you in that  
19       meeting, that contentious meeting you just told us about?

20              A.       I don't believe he said -- I mean I don't  
21       recall.

22              Q.       Well, he apologized for some behavior about  
23       that meeting to you, about what he did to you, right?

24              A.       Well, about the way all the things that were  
25       happening, I don't know if it was specifically about me.

1           A.       He did not tell me that, no.

2           Q.       But he did tell you about his child care  
3 issues, that he needed more time?

4           A.       On Monday the 19th.

5           Q.       Was it -- other than Cameron's child care  
6 concern, was there any other reason you allowed him to  
7 delay his immediate transfer to Atlanta?

8           A.       Other than that I'm a nice guy and try to  
9 deal with family issues, no.

10          Q.       Okay. And how old is Cameron?

11          A.       I don't know.

12          Q.       Under the age of 40?

13          A.       I don't know. I would guess he would  
14 probably be in his late 30's or early 40's.

15          Q.       What did Cameron tell you about the quality  
16 of his training that he received while he was down in  
17 Atlanta?

18          A.       I don't recall. I -- I recall him saying  
19 that he enjoyed his time in Atlanta, and I don't remember  
20 talking to him about training. Again, he was working for  
21 the managers that work for me, so I didn't have day-to-  
22 day contact with Cameron.

23          Q.       Why couldn't Mr. Castleberry have trained  
24 Ray and Cameron about how things are done in the Atlanta  
25 office?

1 actually before he came up here.

2 Q. Why didn't you consider Mr. Burnette for  
3 Mr. Schempp's position? What was that job title, by the  
4 way?

5 A. Paul's title is a maintenance security  
6 coordinator.

7 Q. Sort of an unfair question. Did you  
8 consider Mr. Burnette for the maintenance security  
9 coordinator?

10 A. No.

11 Q. Why not?

12 A. A, I didn't know he wanted it; B, I didn't  
13 know him.

14 Q. In your opinion, would Mr. Burnette have  
15 been qualified for the maintenance security coordinator  
16 position?

17 A. No.

18 Q. Why not?

19 A. I wasn't aware that he had the kind of  
20 qualifications I was looking for, which was the ability  
21 to communicate effectively, the ability to manage, you  
22 know, day-to-day activities, compliance issues, code  
23 issues.

24 Q. Now, did you know these things about  
25 Mr. Burnette when you made the decision to hire

1           Q.       Okay. Do you know whether anybody had  
2 talked with Mr. Burnette and encouraged him to contact  
3 you?

4           A.       I do.

5           Q.       Who do you believe had contacted Mr.  
6 Burnette about that?

7           A.       I believe Ray contacted Human Resources and  
8 Human Resources had informed him that he needed to talk  
9 to me or Paul, and that he needed to come to the Atlanta  
10 campus to work.

11          Q.       Okay. Now, did he, after talking to Bridget  
12 Green, contact you to discuss, or delay, or a reprisal  
13 with respect to reporting to the main hospital?

14          A.       No, he did not.

15          Q.       Did you in fact speak to him after receiving  
16 the May 21st letter?

17          A.       Yes.

18          Q.       Who initiated that contact?

19          A.       I did.

20          Q.       And what was said during the conversation?

21          A.       I had called him to let him know that he had  
22 been terminated.

23          Q.       During that discussion, did Mr. Burnette, at  
24 that time, ask about possibly being transferred -- I'm  
25 sorry -- ask about the child care issue and being given

1 additional time?

2 A. No, he did not.

3 Q. Okay.

4 A. He just --

5 Q. What was his response when you told him that  
6 he was being terminated?

7 A. He said okay, and then he just asked about  
8 what to do with his keys, and I had informed him to get  
9 with Paul about that.

10 Q. Okay. Would it be fair to say that even  
11 before that telephone conversation with him that you  
12 knew, based on his May 21st letter, that he had no  
13 intention of showing up at the main campus as directed?

14 A. Yes.

15 Q. Let me ask you a couple of questions about  
16 the April 21st meeting where you said yourself, and  
17 Mr. Burnette, I think Cameron Edwards, and also Paul  
18 Schempp were present. At the meeting, did the issue of  
19 discipline for not answering on call -- for not answering  
20 after hours calls come up at all?

21 A. No.

22 Q. Would it be fair to say that by that meeting  
23 both Ray, as well as Cameron understood that they didn't  
24 have to take calls after hour if they chose not to?

25 A. Could you repeat that?

1           Q.       Okay. By the time this April 21st meeting  
2 was held --

3           A.       Right.

4           Q.       -- was it clear -- well, do you believe it  
5 was clear to Ray and Cameron that they would not be  
6 disciplined if they chose not to answer or respond to  
7 calls they received after hours?

8           A.       Yes, it was clear to them by April 21st.

9           Q.       Okay. But now at the April 21st meeting,  
10 they were still griping about the loss of call pay,  
11 correct?

12          A.       Yes.

13          Q.       Okay. So it wasn't any issue about  
14 discipline they were complaining about at the April 21st  
15 meeting, it was actually the issue about the loss of call  
16 pay, right?

17          A.       Yes.

18          Q.       Okay. Did you make clear to them that it  
19 was your decision as opposed to Paul's decision to  
20 eliminate call pay for them?

21          A.       I believe I did. I -- I'm not sure.

22          Q.       Okay. HR, you were asked questions about  
23 the write-up that was done by HR. Did I understand you  
24 to say that prior to the write-up, nobody from HR, Teresa  
25 Collier nor Sarah Cummings, had interviewed you as part

1 to Bridget Green during your discussions with her?

2 A. Yes, I did.

3 Q. Okay. And I think you've testified that  
4 Bridget Green was in agreement with the decision to  
5 transfer Mr. Burnette and Mr. Edwards to the Atlanta  
6 campus, correct?

7 A. Yes.

8 Q. With respect to that transfer, would it have  
9 involved moving these gentlemen to a different  
10 department?

11 A. No.

12 Q. So they would have remained in the same  
13 department?

14 A. Yes.

15 Q. What about their salary or base pay, was  
16 that going to be effected at all?

17 A. No, it wasn't.

18 Q. Okay. Would they still work the same eight  
19 hours a day?

20 A. Yes, they would.

21 Q. And would they have still maintained their  
22 same job classification?

23 A. Yes, they would.

24 Q. You were asked about Sam Syi -- what's his  
25 last name?

## MEMORANDUM

**To:** Bridget Green, Human Resources Director  
**From:** Sarah C. Cummings, Human Resources Generalist  
**RE:** Investigation Summary Regarding Paul Schemp Complaint

---

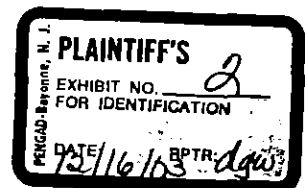
On April 29, 2003 Teresa Dawson-Collier, Employee Relations Manager and I met with Ray Burnette, Maintenance Assistant, and Cameron Edwards, Maintenance Assistant in the administrative conference room at Northside Forsyth. Our meeting was regarding their recent complaint concerning their supervisor Paul Schemp. In addition, we met separately with Paul Schemp, Plant Operations Manager and Larry Castleberry, Chief Engineer.

Ray Burnette and Cameron Edwards stated during our conversation that they are feeling very stressed since Paul Schemp became their supervisor. They both relate that Paul does not communicate well with them or foster a teamwork atmosphere. They stated this is "night and day" to the treatment they received from Larry Castleberry while he operated in the supervisory role. Ray, Cameron and Larry felt that information was not flowing as freely between management and engineering since Paul assumed his role of supervision. In addition, all felt that in their opinion Paul was not knowledgeable of hospital building management or operational knowledge necessary for hospital building maintenance. Larry Castleberry shared that at times he views Paul as not being respectful of the staff and not remembering to treat them as people.

Ray and Cameron stated that the opening for Paul's position was posted on a Friday and by the following Monday he was attending general orientation. Ray also noted that Paul has stated to him that he "knew some woman" whom gave him inside information in order to get the position. Ray and Cameron are very upset about the lack of opportunity to apply for the position and admit that because of the "way" that it appears Paul was hired they have not had positive feelings about Paul from the beginning.

Lastly, according to Ray and Cameron they were threatened with disciplinary action by Paul Schemp if they were not to respond to after hour calls. This was following Paul issuing a directive to Ray and Cameron that they would not longer be paid on call pay but they were to report to work after hours when requested beginning April 1, 2003. Paul notified them he was going to be paid call pay now instead. Paul claims to now be responding to all after hour calls at the hospital. Ray, Cameron, and Larry claim to be aware of instances post April 1, 2003 which Paul did not respond to after hour calls.

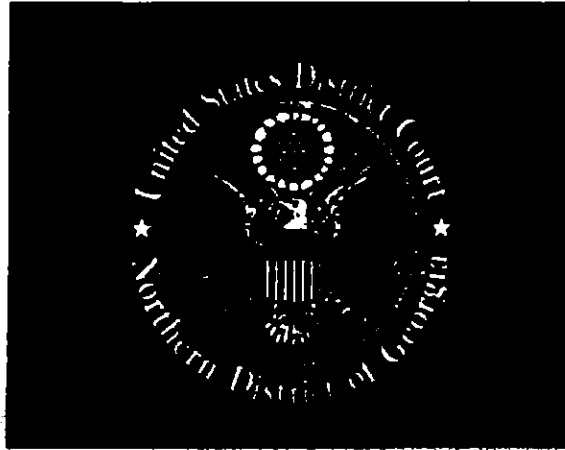
Ray and Cameron ended the interview by stating, that if the situation didn't improve they would see no alternative then to possibly quit their jobs. Larry Castleberry stated he would consider this a great loss to the organization considering their knowledge and tenure with the organization.





#### RECOMMENDATIONS:

- ✓ Reinstated call pay every other week for engineers.
- ✓ Put any changes regarding major changes and especially pay practice changes in writing to staff. This would eliminate staff hearing about call pay for the first time in April. Paul claimed that he was told staff "knew" of these changes ahead of time.
- ✓ Ray and Cameron would perform at their highest potential if reporting to Larry Castleberry. Larry is a tenured Chief Engineer who would manage the operational side of Engineering well.
- ✓ Larry as the Lead Engineer supervising Ray and Cameron should be included in all meetings at which communication would need to be passed onto staff. This would include all ongoing construction meetings.
- ✓ Paul would benefit from attending some leadership training offered through Training and Development such as conflict resolution class, communication class or basic supervisor orientation. Paul appears to struggle with Northside Hospital policy, and rely too heavily on his prior experience with another organization to dictate his decisions.
- ✓ Paul should actively work on developing teamwork and understanding his staff. All his staff related that he is not an active part of day to day activities and often sits in his office apart from staff which makes them see him as an outsider.



Schempp  
~~EXHIBIT / ATTACHMENT~~

Depos

(To be scanned in place of tab)

Paul Schempp - 12/10/03

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 DOUGLAS BURNETTE, )  
5 Plaintiff, )  
6 vs. ) CASE NO: 1:03-CV-2337 ODE  
7 NORTHSIDE HOSPITAL, )  
8 Defendant. )

9 - - -

10 The deposition of PAUL SCHEMP, taken  
11 by the Plaintiff for the purposes of cross-  
12 examination, discovery and all other purposes  
13 allowed under the Federal Rules of Civil  
14 Procedure; all formalities waived, excluding  
15 the reading and signing of the deposition;  
16 before Debbie G. Williams, Certified Court  
17 Reporter and Notary Public in and for the State  
18 of Georgia; commencing at 10:10 a.m.,  
19 Wednesday, December 10, 2003, at 320 Dahlonega  
20 Street, Cumming, Georgia.

21  
22  
23 \*\*\*\*\*  
24 DEBBIE G. WILLIAMS  
25 Certified Court Reporter  
2515 Little John Court  
Cumming, Georgia 30040  
(770) 886-9814

1 I N D E X

2 CROSS-EXAMINATION

3 By Mr. Pankey ..... Page 4

4 DIRECT EXAMINATION

5 By Ms. Bivins ..... Page 120

6 RE-CROSS-EXAMINATION

7 By Mr. Pankey ..... Page 126

8

9 A T T A C H M E N T

10 Disclosure Statement

11

12

13 E X H I B I T S

Exhibit	Description	Page Marked/Identified
P-1	Fax to Human Resources	38/38
P-2	Employee Change of Status Form	93/93
P-3	Employee Separation Notice	95/95
P-4	Northside Grievance Form	103/103

20  
21  
22  
23  
24  
25

1 A P P E A R A N C E S

2

3

4 ON BEHALF OF THE PLAINTIFF:

5 MILES, McGOFF & MOORE, LLC  
6 BY: LARRY A. PANKEY, ESQUIRE  
7 KEVIN McDONOUGH, ESQUIRE  
8 320 Dahlonega Street  
9 Suite 200  
10 Cumming, Georgia 30040  
11 (770) 781-4100

12 ON BEHALF OF THE DEFENDANT:

13 McGUIRE WOODS LLP  
14 BY: SONJA F. BIVINS, ATTORNEY AT LAW  
15 1170 Peachtree Street, N.E.  
16 Suite 2100  
17 Atlanta, Georgia 30309  
18 (404) 443-5500

19 ALSO PRESENT:

20 Douglas Burnette

21  
22  
23  
24  
25

1 P R O C E E D I N G S

2 10:10 a.m.

3 (Whereupon, the court reporter's  
4 disclosure statement was furnished to all  
5 parties.)

6 MR. PANKEY: This will be the  
7 deposition of Paul Schempp, taken pursuant to  
8 Notice, as well as agreement of counsel,  
9 pursuant to the Federal Rules of Civil  
10 Procedure.

11 I understand you have discussed signature  
12 and you'd like to read and sign, is that correct?

13 MS. BIVINS: That's correct.

14 (Whereupon, the signature of the  
15 witness to the deposition was reserved.)

16 MR. PANKEY: Okay. Would you please  
17 swear in the witness?  
18 (Witness sworn.)

19 Whereupon,

20 PAUL SCHEMP  
21 was called as a witness herein and, having been first  
22 duly sworn, was examined and deposed as follows:

23 CROSS-EXAMINATION

24 BY MR. PANKEY:  
25 Q. Mr. Schempp, would you please state your

DEBBIE G. WILLIAMS  
Certified Court Reporter

Paul Schempp - 12/10/03

5

1 full name for the record?

2 A. Paul T. Schempp.

3 Q. Okay. Have you ever given a deposition

4 before?

5 A. No.

6 Q. Okay. You attended last week's deposition

7 of -- of Ray's, right?

8 A. Correct.

9 Q. Okay. It would really help us today if you

10 would enunciate your -- your answers, that is, to say yes

11 or no --

12 A. Okay.

13 Q. -- to the questions.

14 A. Yes.

15 Q. Well, just because uh-huh or unh-unh is real

16 hard to translate, okay?

17 A. Yes.

18 Q. Are you taking any medication today?

19 A. No.

20 Q. Any reason you can't answer our questions

21 truthfully?

22 A. No.

23 Q. Okay. What is your current occupation?

24 A. I'm the maintenance coordinator for

25 Northside Hospital here in Forsyth.

6

1 Q. Is that the same as a maintenance safety

2 coordinator?

3 A. Yes.

4 Q. Okay. Is that the only job title you've had

5 since you've worked at Northside Hospital?

6 A. Yes.

7 Q. Okay. So that was the position you were

8 hired into?

9 A. Yes.

10 Q. Okay. Where did you work prior to Northside

11 Hospital?

12 A. Cousins Properties.

13 Q. Cousins Properties. Have you ever worked at

14 the Atlanta campus, I guess, main campus?

15 A. For approximately a week-and-a-half.

16 Q. I've been hearing in this case this concept

17 of cross-training. Do you remember that from Ray's

18 deposition?

19 A. Yes.

20 Q. It's safe to say you never got any cross-

21 training down at the main campus, did you?

22 A. No.

23 Q. Okay. And so you --

24 A. Well, I -- I did have the week-and-a-half.

25 Q. The week-and-a-half. How did it come to be

7

1 that you found out about the job opening at the Northside

2 -- at Northside?

3 A. Through a contact at Cousins Properties,

4 through Northside Hospital employees.

5 Q. To your knowledge, was the maintenance

6 safety coordinator position ever posted prior to your

7 being hired into that position?

8 A. Yes.

9 Q. It was posted?

10 A. Yes.

11 Q. How long was it posted?

12 A. I don't know.

13 Q. You never saw it posted, right?

14 A. Yes, I did.

15 Q. You did see it posted?

16 A. Yes.

17 Q. Was that the Friday beforehand you started

18 work, the Monday you started work?

19 A. No.

20 Q. How much longer had it been posted?

21 A. I'm not sure.

22 Q. Where did you see the posting at?

23 A. At the employment office at the -- in Sandy

24 Springs.

25 Q. Sandy Springs. Okay. So when we're talking

8

1 about posting, you didn't see any posting at the -- the

2 Cumming campus, I guess, or the Cumming location?

3 A. No, I'd never been there.

4 Q. What is your educational background?

5 A. I graduated high school and went full-time

6 for a year -- a summer, four seasons, to a technical

7 school for air conditioning and refrigeration.

8 Q. And how old are you?

9 A. I'm 34.

10 Q. At the time of your hiring as the

11 maintenance safety coordinator for Northside, how old

12 were you?

13 A. Thirty-three.

14 Q. When you were initially hired into the

15 maintenance safety coordinator position -- well, when was

16 that, what date were you hired?

17 A. I believe it was March 1st or 3rd.

18 Q. Which year?

19 A. 2003.

20 Q. This year?

21 A. Yes.

22 Q. And when you were -- were you a supervisor

23 when you were hired?

24 A. Yes.

25 Q. Who did you supervise?

DEBBIE G. WILLIAMS  
Certified Court Reporter

Paul Schempp - 12/10/03

13

1 Q. For standby call pay?

2 A. Correct.

3 Q. Okay. So you're -- you're paid your normal

4 salary, right?

5 A. (Witness nods head affirmatively.)

6 Q. In addition to that you'll be paid for the

7 remaining hours of the day that you weren't actually at

8 work as standby call pay, right?

9 A. Yes.

10 Q. And that's regardless of whether or not you

11 are called or not, right?

12 A. Yes.

13 Q. Okay. Now, if you actually get called, do

14 you get even more money for being on standby?

15 A. It depends on your position.

16 Q. For example, if you go out and work on the

17 air conditioning because of a problem when you are on

18 standby, are you paid more money in addition to what

19 you're receiving?

20 A. Yes.

21 Q. So you get paid for actually receiving the

22 call as well?

23 A. Yes.

24 Q. So would you agree with me that the -- when

25 you're paid for standby call pay, that what Northside is

15

1 Q. Yes?

2 A. Yes.

3 Q. You've got a pager?

4 A. Yes.

5 Q. Does your phone have the two-way radio --

6 A. Yes.

7 Q. -- as well? So it's not only a cell phone,

8 it's also a two-way radio where they can call you

9 directly on it?

10 A. Yes.

11 Q. Any other way they can get in touch with you

12 that you -- that you're aware of?

13 A. No.

14 Q. What phone service do you use currently for

15 this two-way radio?

16 A. Nextel.

17 Q. Nextel. So it's a Nextel two-way radio. So

18 it's safe to say you -- you can't plan any family

19 vacations during -- while you're on call?

20 A. Yes.

21 Q. You can't go on any trips?

22 A. Not far.

23 Q. Right, right. Are you a football fan at

24 all?

25 A. I am not, no.

14

1 paying you for is for you to be available twenty-four

2 hours a day, seven days a week?

3 A. Yes.

4 Q. And that is to be able to get to the

5 facility within an hour of the problem?

6 A. Yes.

7 Q. How does that inconvenience, you know, your

8 social life, I guess, being on -- on call 24 hours a day?

9 A. I guess you can't go on, you know, you can't

10 go away for the weekend, that weekend.

11 Q. Because you're on call, right?

12 A. Yes.

13 Q. You've got to -- you've got to be in or

14 around within an hour of the facility. Are you on a

15 pager?

16 A. Yes.

17 Q. Are you on a cell phone?

18 A. They give you a cell phone but you are

19 contacted on the pager.

20 Q. What are all the ways that Northside can get

21 in touch with you while you're on call?

22 A. They could call your home if you're home.

23 Q. Okay. So they've got your home. What else?

24 They've got your cell phone.

25 A. Uh-huh (affirmative).

16

1 Q. You're not. You couldn't go to the SEC

2 Championship, I guess, right?

3 A. Not while you're on call.

4 Q. Not while you're on call. Now, it's my

5 understanding that at some point after you came to work

6 at the Cumming facility, Cumming campus, the decision was

7 made to take Cameron and Ray out of the standby call pay

8 payments, I guess, is that right?

9 A. I don't -- I don't believe. I believe it

10 was made before I got there.

11 Q. It was before? Okay. Who made that

12 decision?

13 A. John Cummings.

14 Q. Who is Mr. Cummings?

15 A. He's my direct report.

16 Q. Is that the guy you interviewed with to get

17 your job?

18 A. One of them.

19 Q. Why do you believe it was Mr. Cummings that

20 made the decision to take away standby call pay from Ray

21 and Cameron?

22 A. Because he's the one who asked me to remind

23 them.

24 Q. Did he explain to you why he had removed it?

25 A. Yes.

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Certified Court Reporter

Paul Schempp - 12/10/03

17

1 Q. What was his reason?

2 A. Because we were changing it to -- changing,

3 trying to make the Northside Forsyth campus more in line

4 with what they were doing at the main campus.

5 Q. How would removing standby call pay from Ray

6 and Cameron bring the Cumming facility more in line with

7 the Atlanta facility?

8 A. I believe in the Atlanta -- Atlanta facility

9 that managers and chief engineers are the ones that are

10 on call and receive standby pay.

11 Q. Okay. So is it your testimony that the

12 technicians, I guess, people like Ray and Cameron, in

13 Atlanta don't get compensation for being on standby call

14 pay?

15 A. I'm not sure, but I don't believe any of

16 them are on standby.

17 Q. It's just the managers down there?

18 A. Uh-huh (affirmative). I believe so.

19 Q. And that's because Mr. Cummings told you

20 that?

21 A. That's just from what I've noticed down

22 there, from the way that I know that department operates.

23 I don't know about the other departments down there, I

24 can't -- I just know about the Engineering Department.

25 Q. What training have you had over the years

18

1 about employees as to whether or not they're entitled to

2 overtime or not?

3 A. I have been to a few leadership seminars.

4 Q. Okay. What else with overtime training?

5 A. Our company puts out a newsletter for

6 managers periodically, I believe it's bi-monthly, I don't

7 remember the name of it, but it -- it always has about

8 different issues, legal issues that have arisen from say,

9 performance reviews done incorrectly, how you should do

10 them correctly, and I read those when they come out every

11 couple of months, plus my orientation with the hospital.

12 Q. Okay.

13 A. They cover a lot of policies there.

14 Q. When you heard of Mr. Cummings' decision, I

15 guess that had already been made, to remove standby call

16 pay from people like Ray and Cameron --

17 A. Uh-huh (affirmative).

18 Q. -- did that cause you any concern?

19 A. Yes, a little bit.

20 Q. Why?

21 A. I thought it was bad timing with me being

22 the new supervisor up there.

23 Q. Anything else other than the bad timing?

24 A. No.

25 Q. Did you think, for example, this is in

19

1 violation of the law?

2 A. No, I did not.

3 Q. Did you think this is illegal?

4 A. No.

5 Q. How were Ray and Cameron notified about the

6 change in the standby call pay decision?

7 A. I'm not sure.

8 Q. Did you notify them?

9 A. No.

10 Q. Had they already been notified prior to your

11 hire?

12 A. I believe so. I was told then that they

13 were.

14 Q. Who told you that?

15 A. John.

16 Q. John told you that he had already notified

17 Ray and Cameron --

18 A. Yes.

19 Q. -- of his decision?

20 A. Yes.

21 Q. Okay. And you were -- and when were you

22 hired, March 1st, 2003?

23 A. Either the 1st or the 3rd, I'm not sure.

24 Q. Okay. What conversations have you had with

25 either Cameron, or Ray, or Larry Castleberry about the

20

1 removal of standby call pay?

2 A. I've had -- I've had conversations with

3 Cameron in particular.

4 Q. Okay. What have you and Cameron talked

5 about?

6 A. I reminded Cameron, as I was asked to, about

7 the call pay issue.

8 Q. Why was it necessary to remind him?

9 A. I was asked to by John.

10 Q. Why?

11 A. Because the time of the -- the time of the

12 change had come up. I believe that Northside had a deal

13 when they bought the hospital that said they couldn't

14 change anything for six months and I believe those six

15 months had expired --

16 Q. I see.

17 A. -- or were getting ready to expire.

18 Q. There was something in the -- the Purchase

19 Agreement between Northside and Atlanta versus the former

20 Georgia Baptist that didn't allow Northside to change pay

21 or that kind of thing for six months?

22 A. I think so, yes.

23 Q. And what date did that come up, when did

24 that expire, I guess?

25 A. April 1st.

DEBBIE G. WILLIAMS  
Certified Court Reporter

Paul Schempp - 12/10/03

21

1 Q. April 1st. So if I understand this  
2 correctly, if you were hired in March 1st and the  
3 decision had already been made to change --  
4 A. Yes.  
5 Q. -- standby call pay, it had not taken effect  
6 yet because April 1st hadn't come yet, right?  
7 A. Yes.  
8 Q. Okay. So John Cummings wanted you to remind  
9 Cameron about the change that was coming as of April 1st?  
10 A. He wanted me to remind both Cameron and Ray.  
11 Q. Oh, okay, both Cameron and Ray. And how did  
12 you remind them about the change?  
13 A. I believe Ray was out at the time, so during  
14 a -- a morning get-together with Cameron I brought it up  
15 that John had called and asked me to remind him.  
16 Q. To the best of your memory, what did you  
17 exactly tell Cameron on that day about the change?  
18 A. I believe I said: John called and asked me  
19 to remind you that as of April 1st you will no longer be  
20 on call or receive on-call pay -- or receive pay for  
21 being on call.  
22 Q. Okay. You didn't tell him that he'd no --  
23 no longer be on call, right?  
24 A. Yes, I did.  
25 Q. You did tell him. So there were two things

23

1 Q. Twenty-four/seven you could call them?  
2 A. Yes.  
3 Q. Who told you you could do that?  
4 A. John Cummings.  
5 Q. When did he tell you that?  
6 A. In a phone conversation, I don't remember  
7 exactly when.  
8 Q. So if I understand it then, people like  
9 Cameron and Ray, they're no longer receiving standby call  
10 pay, right?  
11 A. Right.  
12 Q. But they're the guys you would need to call  
13 to come in and do the work 24/7, right?  
14 A. Or I could do it myself if they were  
15 unavailable.  
16 Q. Okay. That's what John Cummings told you?  
17 A. Yes.  
18 Q. Okay. What was Cameron or Ray's reaction  
19 when you told them this?  
20 A. Cameron said that he would -- he said if he  
21 -- he said if I'm off deer hunting, I won't be able to --  
22 I won't be available.  
23 Q. I'm in the middle of the woods somewhere,  
24 right?  
25 A. And I -- yes.

22

1 you told him.  
2 A. Yes.  
3 Q. Not only would he no longer be on call, but  
4 obviously he would no longer be receiving standby call  
5 pay?  
6 A. Uh-huh (affirmative).  
7 Q. Two things, right?  
8 A. Uh-huh (affirmative).  
9 Q. Yes?  
10 A. Yes.  
11 Q. And how did he react to that, what did he  
12 tell you?  
13 A. I believe he said he was going to talk to  
14 the administrator about it.  
15 Q. Why?  
16 A. Because they had tried to do this -- he said  
17 because they had tried to do this previously and Lynn had  
18 done something so that they couldn't.  
19 Q. Did you ever ask Cameron to come in for  
20 on-call work when he wasn't receiving standby call pay?  
21 A. Yes.  
22 Q. Why would you do that if he's no longer on  
23 call, why would you be doing that?  
24 A. I was told that I would -- could call the  
25 guys and if they were available, ask them to come in.

24

1 Q. So what did you say then?  
2 A. I said I understand that, but we expect that  
3 if you are home that you answer the phone, if you are  
4 available, that you at least answer your phone.  
5 Q. Okay. That would be in the middle of the  
6 night, for example, answer the phone?  
7 A. Right.  
8 Q. On the weekend answer the phone while you're  
9 in the deer stand?  
10 A. No, not -- as I said, no, if you're hunting,  
11 if you are available.  
12 Q. Did he explain to you why -- did Cameron  
13 explain to you why this bothered him so much that he was  
14 going to take it up with the administration?  
15 A. He's -- yes, the money.  
16 Q. You were taking away that five to ten  
17 thousand dollars a year from them?  
18 A. Correct.  
19 Q. Right?  
20 A. Yes.  
21 Q. He had a -- a small baby on the way, as I  
22 recall?  
23 A. Yes.  
24 Q. And what did you tell him about if he took  
25 it up with the administration?

DEBBIE G. WILLIAMS  
Certified Court Reporter

Paul Schempp - 12/10/03

49

1 Q. Okay.

2 A. Lunch was another time, now --

3 Q. So --

4 A. -- that you mentioned it. There were many

5 times which I would talk to the guys about --

6 Q. Okay.

7 A. -- excessive times they would take for

8 lunch.

9 Q. I'm asking about Ray right now.

10 A. Ray, in particular.

11 Q. All the oral reprimands you gave him. Okay.

12 So we've -- you orally reprimanded him for the -- where

13 he was parking the truck in front of the --

14 A. Uh-huh (affirmative).

15 Q. -- garbage compactor, right?

16 A. Yes.

17 Q. You orally reprimanded him for long lunches?

18 A. Yes.

19 Q. What else, other than those two things?

20 A. I believe maybe a long time out on the mail

21 run.

22 Q. Okay. That's three things. What else?

23 A. I don't remember.

24 Q. Okay. Did you ever orally reprimand anybody

25 for their resistance to the standby call pay change?

50

1 A. I had said something to Cameron at one

2 point.

3 Q. What did you say?

4 A. I told Cameron that -- when he said that he

5 would just not answer the phone for any reason, he just

6 wouldn't answer the phone, whether he was home or not --

7 Q. You're not going to pay me, I'm just not

8 going to answer the phone.

9 A. Right -- well, no, not -- that we wouldn't

10 pay him to standby. I told him that there would be -- he

11 sort of said what are you going to do if I just don't

12 answer it whether I'm home or not. And I said you would

13 be subject to disciplinary action.

14 Q. I see. Did you say a similar thing to

15 Mr. Burnette when he resisted taking calls?

16 A. I don't believe so.

17 Q. Okay. But you --

18 A. But I may have.

19 Q. Okay. You may have. But you certainly told

20 -- remember telling it to Cameron?

21 A. Yes.

22 Q. Saying you just can't be at home ignoring

23 the phone.

24 A. What I don't remember is if Ray was there or

25 not.

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1 Q. Okay.

2 A. I know I didn't say it in a separate

3 instance.

4 Q. Why would that have resulted in potential

5 discipline action for Cameron?

6 A. As it turns out, it would not have. The

7 following day I found out that that was incorrect and

8 that I shouldn't have said that.

9 Q. Who told you you were wrong?

10 A. John Cummings.

11 Q. What did he tell you?

12 A. He told me that I shouldn't have said that

13 and to go tell Cameron that I made a mistake saying that.

14 Q. How had it gotten to John Cummings'

15 attention, your conversation about this disciplinary

16 action?

17 A. I don't know.

18 Q. Had Cameron complained?

19 A. I don't know.

20 Q. Okay. Ray complained? You don't remember?

21 A. I -- I don't know how John found out. He

22 called me and told me that he heard I said that and that

23 I shouldn't have.

24 Q. But you wouldn't have told Mr. Cummings that

25 I threatened these guys with disciplinary action if they

52

1 didn't answer the phone, right, you didn't tell him that?

2 A. I thought that was what John had asked me to

3 do if this came up.

4 Q. Why did you think that?

5 A. I thought that's what he told me on a phone

6 call earlier.

7 Q. Okay. Well, tell me what he said on the

8 phone that led you to believe that hey, if they don't

9 answer the phone, they'll be in trouble. What did he

10 say?

11 A. I thought he told me on a previous phone

12 call when I was asking what to do if they just wouldn't

13 answer the phone, I thought he said that they would be

14 subject to disciplinary action.

15 Q. That's what he told you, that's what you

16 remember him telling you?

17 A. That's what I remember him telling me.

18 Q. You have since learned by him that that's

19 not what I told you, that's what he said, right?

20 A. Correct.

21 Q. Okay. But at one point you have a memory of

22 him telling you --

23 A. To the best -- that's what I -- to the best

24 of my recollection that's what I thought he had told me.

25 Q. The same document, if we can go to the



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1 on understanding why it was against, but I don't know the  
 2 particular part any longer.

3 Q. Did Human Resources, to your knowledge, ever  
 4 investigate Ray or Cameron's complaints?

5 A. Yes.

6 Q. How did they investigate, did they call you?

7 A. Yes.

8 Q. What role did you play in the Human  
 9 Resources investigation of these complaints?

10 A. I was asked a lot of questions.

11 Q. Who was asking you questions?

12 A. A woman by the name of Sarah Cummings.

13 Q. No relation, right?

14 A. No.

15 Q. Okay.

16 A. Not that I'm aware of. I don't think so.

17 Q. Who else did you speak with about this  
 18 investigation?

19 A. There was -- I think a supervisor was there,  
 20 but I do not remember her name.

21 Q. So Sarah Cummings and another woman?

22 A. Yes.

23 Q. Okay. Anyone else other than those two  
 24 ladies?

25 A. From -- no, I think that was the only two.

58

1 Q. Did you speak with anyone else about the  
 2 investigation other than these two people?

3 A. No.

4 Q. Okay. What did she ask you about this  
 5 investigation?

6 A. Like there was a lot of questions. Some  
 7 were when did I find out that the call pay would be taken  
 8 away.

9 Q. What did you tell her?

10 A. Who told me that the call pay was going to  
 11 be taken away. She asked me about what I said about  
 12 disciplinary action.

13 Q. Were you honest in your responses to her?

14 A. I told her the same thing I said here today.

15 Q. Okay. So --

16 A. Yes, I was honest.

17 Q. Okay. And the call pay issue as to when,  
 18 when did you tell her that you knew there was going to be  
 19 a change?

20 A. I told her that I had known for some time  
 21 because John had -- had mentioned it. It's -- you know,  
 22 I forget just when, but John had mentioned it previously,  
 23 and Cameron and Ray had been overheard grumbling about it  
 24 before, earlier on, too. I don't remember exactly when.  
 25 I probably gave her more of a date because it was not too

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1 long after it had happened, so I would have been --  
 2 remembered the dates better.

3 Q. She was taking notes during this  
 4 investigation, wasn't she?

5 A. I'm not sure.

6 Q. You didn't see her taking any notes?

7 A. I don't remember if there were notes or not.

8 Q. Did she record your conversation?

9 A. I don't think so.

10 Q. Well, she asked you all these questions and  
 11 you don't remember her taking any notes? A lot of  
 12 questions?

13 A. I don't remember, no.

14 Q. Did she tell you then that you were mistaken  
 15 or wrong about your disciplinary action statement to  
 16 them?

17 A. They did not offer any opinions to me on  
 18 anything.

19 Q. But you told her that you had threatened  
 20 disciplinary action, right?

21 A. Yes.

22 Q. Okay. You would agree with me that this  
 23 investigation took place prior to Ray's transfer, didn't  
 24 it?

25 A. Yes.

60

1 Q. And it also took place prior to his  
 2 termination?

3 A. Yes.

4 Q. How much longer did it take, how much time,  
 5 was it a month, I guess, prior to his termination?

6 A. Sounds about right.

7 Q. Within a month of Ms. Cummings', Sarah  
 8 Cummings' investigation of Cameron and Ray's complaints  
 9 about standby call pay, he was transferred and  
 10 terminated, wasn't he?

11 A. That sounds about right.

12 Q. Did she ask you about the posting of your  
 13 position in that investigation?

14 A. No.

15 Q. Was she involved in your hiring in any way?

16 A. No.

17 Q. When she -- where did this investigation  
 18 take place, was it in the Cumming facility?

19 A. Yes.

20 Q. What office were you in?

21 A. It was a small conference room in the  
 22 Administration area.

23 Q. Did you ever hear the -- the results of her  
 24 investigation in any way?

25 A. No.

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1 Q. But you did learn you were wrong, right?

2 A. No.

3 Q. You never learned you were wrong?

4 A. Except for what John told me about what I

5 said about disciplinary action.

6 Q. Okay. When she started the investigation

7 with you, did she remind you that we're just here to

8 investigate, we're not going to retaliate against you in

9 any way?

10 A. I don't remember.

11 Q. You don't remember. I may have asked you

12 this earlier: Was Mr. Cummings upset in any way about

13 Ray or Cameron protesting the call pay change?

14 A. Not visibly.

15 Q. Not visibly?

16 A. I don't know how the man felt, I can just

17 tell you that he didn't appear to be.

18 Q. How long did Cameron Edwards transfer down

19 to the Atlanta location?

20 A. I believe it was a couple of months.

21 Q. Did he come back with a better attitude?

22 A. Yeah, I believe so.

23 Q. Okay. It helped him as an employee?

24 A. I think so.

25 Q. Did he tell you that?

62

1 A. No.

2 Q. Did he complain about what he did while he

3 was down there to you in any way?

4 A. No.

5 Q. Did he ever tell you that it was worthless?

6 A. I don't remember. No, I don't remember him

7 saying that.

8 Q. What have you been told about the training

9 he was receiving while he was down there?

10 A. I remember him saying he like enjoyed the

11 time he had down there, and that he was thinking of

12 trying to get a transfer.

13 Q. So he liked being down there?

14 A. He liked the -- yeah.

15 Q. Did he put in for a transfer?

16 A. I'm not sure. I believe the reason he

17 wanted the transfer though was to change to a different

18 shift where there was a differential and you got some

19 extra money.

20 Q. He would have made more money potentially?

21 A. Uh-huh (affirmative).

22 Q. Was that in the boiler room?

23 A. I don't know.

24 Q. On this disciplinary action, did you tell

25 either Ray or Cameron that it was John Cummings' decision

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1 to discipline them if they didn't answer the phone?

2 A. As I said earlier, when Cameron asked me

3 what we would do, I did tell him that John said that

4 there would be disciplinary action because that's what I

5 thought John had told me on the phone.

6 Q. Okay. Now, you would agree with me Ray and

7 Cameron didn't talk to John Cummings directly about this

8 change in standby call pay, did they?

9 A. I don't know if they called him or not, I

10 don't believe so.

11 Q. The only information they would have had

12 about potential discipline came from you --

13 A. Correct.

14 Q. -- right? And you had told them that

15 Cummings would discipline them if they didn't agree with

16 this, right?

17 A. Not if they didn't agree, no, I never said

18 that.

19 Q. So how was Mr. Cummings involved in the

20 discipline? What did you tell them about his involvement

21 in their discipline?

22 A. I said that John said there would be

23 disciplinary action if they never answered their phones.

24 Q. Okay. Got it. So in your opinion, did they

25 have a legitimate complaint against Mr. Cummings for this

64

1 disciplinary action conversation that you had related to

2 them because they wouldn't have known otherwise other

3 than what you had told them?

4 A. In my opinion, they did not because I went

5 back the next day and told them I was sorry, it was a

6 mistake, and that John says that that's not what he

7 wanted me to tell you.

8 Q. Okay. So the time frame we're dealing with

9 here is you tell them on day one, whatever day this was,

10 about the change in standby call pay, right?

11 A. Yes.

12 Q. And then the very next day you go back and

13 apologize, say you -- I was wrong?

14 A. Yes.

15 Q. There was just a day?

16 A. Just a day.

17 Q. How did Ms. Cummings have an opportunity to

18 investigate within that one day time frame?

19 A. I don't believe it was a result of the

20 investigation.

21 Q. What was she investigating then?

22 A. The complaint. I don't know. I never saw

23 the complaint.

24 Q. Okay. So day one you tell them about the

25 disciplinary action.

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Certified Court Reporter

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1 A. (Witness nods head affirmatively.)

2 Q. Ms. Cummings investigates, and then --

3 A. I don't believe --

4 Q. -- you change your opinion?

5 A. No, I don't --

6 Q. That's not what happened?

7 A. -- believe -- I don't believe that's what

8 happened. No, this is totally separate from her

9 investigation.

10 Q. Okay. You told them about discipline and

11 you apologized the next day after --

12 A. Correct.

13 Q. -- speaking with Mr. Cummings?

14 A. After he called me and spoke with me.

15 Q. And then Ms. Cummings investigated later?

16 A. I believe so.

17 Q. Okay. So they didn't have a legitimate

18 complaint to HR because you already told them we're not

19 going to do that?

20 A. They may have had other legitimate -- I don't

21 know what their complaint was to HR. I -- I don't know.

22 Q. Well, in your opinion, was it a legitimate

23 complaint not to want to be transferred to the Atlanta

24 campus from Cumming by Mr. Burnette?

25 A. I don't know. I don't know his

66

1 circumstances, I don't have -- I don't know.

2 Q. What about the fact that he was complaining

3 about your position -- your position not having been

4 posted, was that a legitimate complaint?

5 A. I don't know whether it was posted up there

6 or not. I mean I would have no way to know, I wasn't up

7 there yet.

8 Q. In your opinion, were you more qualified for

9 your position than Mr. Burnette?

10 A. Yes.

11 Q. Why?

12 A. My time in technical school, my Universal

13 CFC License.

14 Q. All right. Let me get that down. Technical

15 school. What license?

16 A. It's a Universal Refrigerant License.

17 Q. What else?

18 A. And my extensive construction work with

19 Cousins Properties in opening new buildings and starting

20 new maintenance departments.

21 Q. Anything else?

22 A. That's all I have off the top of my head.

23 Q. Okay. But you had the opportunity to

24 personally observe Ray?

25 A. Correct.

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1 Q. What about job knowledge, how would you

2 characterize your job knowledge versus that of Ray's?

3 A. I was more -- whose job, his or mine?

4 Q. In his doing his job?

5 A. I was more proficient with the energy

6 management system there because I had had the same one at

7 Crawford Long and been to school for it.

8 Q. How long did you work at Crawford Long?

9 A. Crawford Long was one of the buildings that

10 I oversaw, that I was managing during construction and

11 while it was being filled with tenants.

12 Q. You never worked for Crawford Long?

13 A. I'm sorry, that --

14 Q. You never worked for Crawford Long?

15 A. No, I worked for Cousins Properties.

16 Q. Yeah, that was building something there?

17 A. Which runs the medical office building on

18 top of Crawford Long.

19 Q. I see. So --

20 A. It's called Crawford Long Medical Office

21 Building anyway. It's Medical Office Tower, actually.

22 Q. How long did you work for Cousins Properties

23 on the Crawford Long project?

24 A. About two years.

25 Q. What other hospital experience had you had

68

1 other than Crawford Long?

2 A. Not hospital, but extensive medical.

3 Q. Okay. So no other hospital experience?

4 A. No.

5 Q. Okay. What other medical experience had you

6 had?

7 A. I ran -- opened Meridian Mark Plaza for

8 Cousins, which is the highest volume surgery center in

9 the Southeast.

10 Q. How long did you work on the Meridian Mark

11 Plaza project?

12 A. About four years.

13 Q. What were your duties while working at the

14 Meridian project?

15 A. I was the chief engineer, oversaw the

16 maintenance of the building.

17 Q. Maintenance of the building?

18 A. Maintenance, building -- oversaw building

19 maintenance, the engineer who was there, stationed there,

20 as well as oversaw a lot of the tenant construction in

21 the base building when it was being built.

22 Q. The duties that you were performing at

23 Meridian, are those the same duties you perform now at

24 Northside?

25 A. A lot of them are.

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1 Q. What are the same? What are similar?

2 A. A lot of the Joint Commission paperwork.

3 Joint Commission paperwork because the Meridian Mark,

4 most of Meridian Mark is subject to Joint Commission

5 inspections, which are the major -- major part of running

6 a maintenance department in a hospital. They are subject

7 to the same rules and regulations as a hospital is

8 because they do surgery in most of that building.

9 Q. So your paperwork's the same?

10 A. Yes.

11 Q. What else?

12 A. They have similar energy management systems,

13 similar equipment. They have operating rooms in them

14 where you have similar rules, you have to dress out

15 before you go in. The construction rules are very

16 similar; you can't have dust, it causes Aspergillus,

17 which is deadly to immuno compromised patients. There's

18 met gas in the area; oxygen in the buildings, you have to

19 be careful where you're drilling and cutting so you don't

20 cut through. There's a lot of similarities.

21 Q. You've said energy management now a few

22 times. What is energy management?

23 A. It's a somewhat complicated system that runs

24 the heating and air conditioning in a commercial building

25 that is often tied in with the fire alarm system.

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1 Q. Energy management, so that's when we're

2 using too much air conditioning or too much heat, that

3 kind of thing?

4 A. It tells the cooling towers when to turn the

5 fans on and when to turn the pumps on; it tells the boxes

6 in the ceiling how much air to let out into the room; how

7 much the humidifiers need to come on to keep the humidity

8 correct for an operating room; how much fresh air to

9 bring into a building to keep the air changes to the

10 correct amount that J-CO says that you should have in

11 areas where procedures are being done. It handles a lot

12 of the decision making for the mechanical equipment in

13 the building.

14 Q. How much do you make now in your current

15 position?

16 A. Including -- including the on-call pay, I

17 make -- I think it was -- I just got a raise. I don't

18 know what it was with the raise, but it was about a

19 dollar an hour, and before that I was making sixty-two a

20 year. A dollar an hour, so about two thousand more, so

21 about sixty-four.

22 Q. So when you were hired on you were making

23 sixty-two thousand a year?

24 A. Yes.

25 Q. Now you make more?

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1 A. Yes.

2 Q. A dollar an hour more, approximately?

3 A. Roughly, yes.

4 Q. Does that sixty-two thousand a year, does

5 that include the on-call pay?

6 A. Yes.

7 Q. And you're on salary now?

8 A. Yes.

9 Q. Despite being on salary, if you're on call,

10 you get the on-call pay in addition to your salary?

11 A. Yes.

12 Q. How long were you at technical school?

13 A. For full-time, a year.

14 Q. One year?

15 A. Full year. Full year. It was not just a

16 semester, it was two semesters, it was all summer and

17 then all winter. All you got off was Christmas, New

18 Year's, I mean.

19 Q. What technical school did you go to?

20 A. Technical Careers Institute.

21 Q. TCI?

22 A. Yes.

23 Q. And did you get a degree of any sort from

24 there?

25 A. I got a certificate from them.

72

1 Q. What kind of certificate?

2 A. I haven't looked at it in a long time, I

3 don't remember exactly what it says. It says how many

4 hours that I completed their course in Heating and Air

5 Conditioning Ventilation.

6 Q. Was your certificate a part of your job

7 description when you applied for -- for your job?

8 A. I brought a copy of it to John.

9 Q. Did you see a copy of the job description

10 when you applied for this position?

11 A. At some point I did, I think it was the

12 Human Resources people.

13 Q. Do you recall whether or not your

14 certificate of completion was a part of getting the job,

15 was it a requirement?

16 A. I don't know. Most of them say or

17 equivalent, or something, so I'm not sure.

18 Q. Was a year of technical school a requirement

19 for your job?

20 A. I'm not sure.

21 Q. Okay. Was a Universal Refrigeration License

22 a requirement of your job?

23 A. I'm not sure.

24 Q. You don't know?

25 A. (Witness shakes head negatively.) I think

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1 it may -- it may have been, I'm not sure.  
 2 Q. Did you have any friends working at  
 3 Northside prior to your application?  
 4 A. Not friends, no.  
 5 Q. Acquaintances?  
 6 A. A lot, yes.  
 7 Q. And did any of these acquaintances help you  
 8 in getting your job with Northside?  
 9 A. I wouldn't say they helped me with getting  
 10 it. They kept me informed of opportunities at Northside,  
 11 yes.  
 12 Q. Tell me all the people that helped you get  
 13 your job at Northside.  
 14 A. No one helped me get my job at Northside.  
 15 Q. No one helped you?  
 16 A. No.  
 17 Q. Well, who told you the job was available?  
 18 A. Freda Hardage.  
 19 Q. Freda?  
 20 A. Yes.  
 21 Q. How do you spell Freda?  
 22 A. F-r-e-d -- I'm not sure, I think it's  
 23 just a.  
 24 Q. Hardage?  
 25 A. Yeah.

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1 Q. How do you spell Hardage?  
 2 A. I'm not sure.  
 3 Q. Where does she work?  
 4 A. In Alpharetta.  
 5 Q. Is that in the hiring office?  
 6 A. No.  
 7 Q. What -- what office is it?  
 8 A. The -- the administration office for that  
 9 campus.  
 10 Q. How did she tell you the job was available?  
 11 Describe that for me.  
 12 A. I asked her. I always asked her when there  
 13 were openings at Northside.  
 14 Q. Who else let you know that job was available  
 15 other than Freda Hardage?  
 16 A. That's all.  
 17 Q. That's it?  
 18 A. Yes.  
 19 Q. Did you know John Cummings prior to your  
 20 being hired?  
 21 A. I had met him a few times.  
 22 Q. Where did you meet him?  
 23 A. Through Cousins Properties. He was  
 24 responsible for Northside equipment and buildings that I  
 25 managed for Cousins Properties.

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1 Q. How many times had you met him prior to your  
 2 hiring?  
 3 A. Three or four.  
 4 Q. Did he let you know that he was looking for  
 5 somebody like you, he liked the way you worked, anything  
 6 like that?  
 7 A. No, but I would like to think that he did.  
 8 Q. What conversations did you have with  
 9 Mr. Cummings prior to your hiring at Northside about  
 10 being hired?  
 11 A. None.  
 12 Q. None. Did you use him as a reference when  
 13 you applied?  
 14 A. Use who?  
 15 Q. John Cummings.  
 16 A. No.  
 17 Q. Okay. So Freda told you there was a job  
 18 opening coming open in Cumming?  
 19 A. I asked her and she said there was.  
 20 Q. Do you know when you asked her?  
 21 A. I asked her many times in the four years. I  
 22 probably asked her -- I don't know at this particular  
 23 time, no, I don't.  
 24 Q. When did she tell you it would -- was coming  
 25 open, when it actually was open?

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1 A. I saw that they had purchased the hospital.  
 2 What was it again? I'm sorry.  
 3 Q. When did Ms. Hardage tell you of the job  
 4 opening?  
 5 A. I don't remember the exact date. She didn't  
 6 just tell me. I had asked her many times, and one time  
 7 she said I think it might be.  
 8 Q. So would it be fair to say you had prior  
 9 knowledge of the job opening?  
 10 A. I don't think so.  
 11 Q. Do you believe it was already posted?  
 12 A. Yeah. I don't know, I assume it was.  
 13 Q. What's her job title?  
 14 A. I don't know her title.  
 15 Q. Okay. That's fine.  
 16 MR. PANKEY: We'll take a break.  
 17 (Whereupon, a break was taken.)  
 18 BY MR. PANKEY: (Resuming)  
 19 Q. All right. We just took a break and at the  
 20 break I spoke with my client. And was he out on surgery  
 21 at one point while you were there?  
 22 A. Yes.  
 23 Q. Do you recall whether or not the day you  
 24 told Cameron about the change in call pay that Ray came  
 25 in out of surgery to talk with you about it on the same

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1 day? Did that happen, does that help you remember --  
 2 remember anything?  
 3 A. It sounds familiar, yeah.  
 4 Q. It sounds familiar that you would have told  
 5 Cameron first, and then Cameron told Ray at home, and  
 6 then Ray came in to talk to you about it, does that sound  
 7 familiar?  
 8 A. It sounds like he could have, yeah.  
 9 Q. Did you ever tell him that he would -- tell  
 10 Ray that he would still be technically on standby, but  
 11 that he would not be paid for this time --  
 12 A. No.  
 13 Q. -- at that meeting?  
 14 A. Never.  
 15 Q. You never told him that?  
 16 A. No.  
 17 Q. If you lived 38 miles away from this  
 18 facility, how far away did Ray live from the facility?  
 19 A. I didn't know until the deposition that he  
 20 gave last week, so I know he lives something like two  
 21 miles now.  
 22 Q. You didn't know that beforehand?  
 23 A. I knew he lived nearby, but I had no idea it  
 24 was that close.  
 25 Q. You knew he lived closer, certainly, than

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1 you did, right?  
 2 A. Yes, he did.  
 3 Q. From a practical standpoint, if somebody was  
 4 going to go into the facility in the middle of the night,  
 5 Ray would have been the guy to do it because he's right  
 6 there, right?  
 7 A. Well, I -- I -- Cameron, I thought, lived  
 8 just as close until last week.  
 9 Q. Until last week?  
 10 A. Until the deposition I thought Cameron lived  
 11 just about as close as Ray did. But I've, since last  
 12 week, now realize that that's not the case.  
 13 Q. Okay. Prior to Ray's termination, did  
 14 anyone in the entire Northside facility complain to you  
 15 about Ray in any way?  
 16 A. No, not prior to it, no.  
 17 Q. Since his termination, have there been  
 18 complaints about his work?  
 19 A. There's been a couple.  
 20 Q. Who complained?  
 21 A. The -- the manager for Cardio Pulmonary. I  
 22 guess that's about it, but I don't know. I don't  
 23 remember, I don't know. There was a couple here and  
 24 there --  
 25 Q. Okay.

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1 A. -- but I don't -- I don't usually pay that  
 2 sort of information much mind, so I -- so I just, I don't  
 3 remember exactly who.  
 4 Q. What was the Cardio Pulmonary manager's  
 5 complaint about Ray?  
 6 A. That things didn't get done for long periods  
 7 of time.  
 8 Q. Is that the only person who's ever told you  
 9 that about Ray?  
 10 A. No, it's not. But like I said, I -- I  
 11 really -- it's been a long time and I really don't pay --  
 12 I try and see things for myself, so I would have  
 13 purposely tried to brush it off and forget it.  
 14 Q. Since you have been with Northside, and  
 15 prior to Ray's termination, he wasn't -- he didn't  
 16 receive a written reprimand of any sort, did he?  
 17 A. No.  
 18 Q. Okay. And has Cameron received a written  
 19 reprimand of any sort since he's worked with you?  
 20 A. No.  
 21 Q. None? And has Larry Castleberry received a  
 22 written reprimand of any sort since you've worked at  
 23 Forsyth?  
 24 A. Not that I'm aware of.  
 25 Q. Does Mr. Castleberry -- or did Mr.

80

1 Castleberry work for Mr. Cummings?  
 2 A. Previously.  
 3 Q. Previously.  
 4 A. Or at some point. I mean he was there for a  
 5 long time. I know at some point he reported directly to  
 6 John Cummings.  
 7 Q. Mr. Castleberry is an hourly employee,  
 8 right?  
 9 A. I believe, yes.  
 10 Q. He's a nonexempt employee?  
 11 A. Yes.  
 12 Q. And he receives standby call pay?  
 13 A. Correct.  
 14 Q. Do you know why the decision was made to let  
 15 you, yourself, and Mr. Castleberry take all the standby  
 16 call pay and to exclude Cameron and Mr. Burnette?  
 17 A. I'm not sure, but I think it's because  
 18 that's the way it was done at the main campus.  
 19 Q. So why does Mr. Castleberry, in your mind,  
 20 qualify for the standby call pay because of what's going  
 21 on at the Atlanta campus?  
 22 A. Because he's a chief engineer, which is  
 23 second, you know, second in line to the manager.  
 24 Q. Do you know if Mr. Castleberry was -- was  
 25 ever told to take all of the call?

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1 every day the first week they did it.  
 2 Q. When did he transfer up from the Atlanta  
 3 facility to Cumming?  
 4 A. I hear -- I'm not sure of the date, but it  
 5 was, I think, just prior to when Northside bought it.  
 6 Q. October of 2002?  
 7 A. That sounds about right.  
 8 Q. Do you know if they took long lunches down  
 9 at the Atlanta facility?  
 10 A. No, they do not.  
 11 Q. No, they do not?  
 12 A. No.  
 13 Q. Where did he learn that long lunch behavior,  
 14 why was he doing that?  
 15 A. I believe he learned it up here. I mean I  
 16 can't say for sure though.  
 17 Q. Where does he live?  
 18 A. I don't know where he lives.  
 19 Q. Does he live in Cumming?  
 20 A. No.  
 21 Q. You don't know where he lives?  
 22 A. He lives somewhere south of Cumming but not  
 23 real far.  
 24 Q. Not real far?  
 25 A. No.

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1 Q. Do you know if he requested a transfer up  
 2 here to the Atlanta -- excuse me, the Cumming location?  
 3 A. I don't believe he did.  
 4 Q. Why not?  
 5 A. Because there were no transfers to request  
 6 at the time he came up.  
 7 Q. He came from the Atlanta facility, right?  
 8 A. Yeah, but I believe he came before it was  
 9 even purchased by -- by Northside.  
 10 Q. I see. So he was working for Georgia  
 11 Baptist?  
 12 A. I don't know how that all worked, but I  
 13 believe Georgia Baptist owned the place when -- when he  
 14 first came up.  
 15 Q. Is it a case of he used to work for  
 16 Northside, he left them to come here, and then now he's  
 17 working for Northside again?  
 18 A. No. No, I think he was a Northside employee  
 19 the whole time.  
 20 Q. Okay.  
 21 A. Maybe -- I think something happened, Baptist  
 22 reimbursed him for the -- I don't know.  
 23 Q. Did Mr. Castleberry deal with mail runs?  
 24 A. Yeah, sometimes.  
 25 Q. Was he taking too much time for a mail run?

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1 A. No, he seemed pretty good.  
 2 Q. What about this company truck business, how  
 3 do you get a company truck, or who had a company truck  
 4 while you were there?  
 5 A. Well, when I first came there, there were  
 6 two company trucks and all the guys had keys to the  
 7 company trucks, but you weren't supposed to take them  
 8 home. I don't think anyone ever did take them home at  
 9 night, but there was really very poor -- I mean everyone  
 10 had a key, there wasn't -- you just took it and went to  
 11 the store, I guess, when I first went up there. Now we  
 12 have a sign-out sheet.  
 13 Q. Did Ms. Cummings, Sarah Cummings, ever tell  
 14 you in any way that she thought there was some sort of  
 15 retaliation going on?  
 16 A. No.  
 17 Q. Do you know who Sam Syi is? S-y-i?  
 18 A. No.  
 19 Q. I'm told that there's an individual that  
 20 works for Mr. Cummings down in Atlanta who is a, I guess,  
 21 potential son-in-law. Have you heard about this person?  
 22 A. Yes, I did hear something.  
 23 Q. Where did you hear that?  
 24 A. From Cameron.  
 25 Q. What did Cameron tell you?

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1 A. That Cummings -- that the guy John Cummings'  
 2 daughter dates works at the main campus.  
 3 Q. That Mr. Cummings, John Cummings, got his  
 4 potential son-in-law a job at the main campus?  
 5 A. That's the way Cameron phrased it.  
 6 Q. Okay. Okay. Did Cameron tell you that this  
 7 individual got Mr. Cummings' daughter pregnant?  
 8 A. I believe that's what he said, yeah.  
 9 Q. Okay. Did -- did Cameron tell you that Sam,  
 10 this potential son-in-law, was out of work for an  
 11 extensive period of time and received no disciplinary  
 12 action?  
 13 A. That's what Cameron said.  
 14 Q. And Cameron was down there on his cross-  
 15 training, wasn't he?  
 16 A. Yeah.  
 17 Q. Did Cameron tell you that he worked with  
 18 Sam?  
 19 A. No, he never mentioned that.  
 20 Q. Didn't mention it. Who replaced  
 21 Mr. Burnette?  
 22 A. We hired a person from outside the company  
 23 by the name of Larry Pendley.  
 24 Q. Larry Pendley?  
 25 A. Uh-huh (affirmative).

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1 Q. That's yes, right?

2 A. Yes.

3 Q. How old is Mr. Pendley?

4 A. I don't know exactly.

5 Q. Is he over 40, under 40?

6 A. Definitely over 40.

7 Q. Over 40? He's an older gentleman?

8 A. Yes.

9 Q. When did you hire Mr. Pendley?

10 A. I believe it was July 1st.

11 Q. Why do you believe Mr. Pendley replaced

12 Mr. Burnette?

13 A. Because they wouldn't have let me hire

14 anyone unless -- unless there was an open position.

15 Q. What was Mr. Pendley's prior work

16 experience?

17 A. He -- he did a lot of maintenance and boiler

18 work for the University of Florida.

19 Q. I'm sorry, what was his hire date again?

20 A. I believe it was July 1st.

21 Q. Has Mr. Pendley ever worked at the main

22 campus?

23 A. No.

24 Q. How much cross-training has Mr. Pendley

25 received down in the Atlanta facility?

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1 A. None.

2 Q. Why not?

3 A. I don't know. I've never thought about it.

4 Q. Who transferred up here to the Cumming

5 facility while Cameron was down there cross-training and

6 Ray had been terminated?

7 A. A guy -- well, there was someone that --

8 well, there was one for each of them, which one are you

9 asking about, both or one at a time?

10 Q. Let's break it down both ways. Cameron?

11 A. Cameron, it was a man named Hugh Silvers.

12 Q. Hugh?

13 A. Yes.

14 Q. And did anybody replace Ray from the Atlanta

15 facility?

16 A. Temporarily, yes.

17 Q. Who was that person?

18 A. James Waldrip.

19 Q. James Waldrip?

20 A. Yes.

21 Q. How old is Mr. Waldrip?

22 A. I don't know.

23 Q. Over 40, under 40?

24 A. Under 40.

25 Q. Under 40?

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1 A. I believe, I'm not sure.

2 Q. Thirties?

3 A. Yeah, that makes sense.

4 Q. Younger than you?

5 A. I don't know, it's hard to tell. He's --

6 he's -- I can't tell with him, he's one of those people

7 who's hard to judge.

8 Q. Younger guy under the age of 40?

9 A. Yes. Young, under 40, but not -- definitely

10 not under 30, but under 40, if I had to guess.

11 Q. Who hired Larry Pendley?

12 A. I did.

13 Q. What was Mr. Cummings' involvement in the

14 hiring of Larry Pendley?

15 A. He reviewed the application and resume',

16 asked me questions for a few minutes, and then said I

17 could go ahead.

18 Q. Anything else in his involvement in hiring

19 of Larry Pendley?

20 A. No.

21 Q. Mr. Cummings never expressed to you the need

22 to cross-train Mr. Pendley down in the Atlanta office?

23 A. No, not yet.

24 Q. Not since July 1st?

25 A. (Witness shakes head negatively.)

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1 Q. Did Mr. Cummings ever give you any detail as

2 to what types of cross-training anybody would receive by

3 these transfers?

4 A. No.

5 Q. He didn't give you what they would learn

6 down there or what he would teach them for you?

7 A. Except for to teach me the way that

8 Northside runs an Engineering Department, the way the

9 department is.

10 Q. Did he ever tell you how long the training

11 was going to be for?

12 A. No, but he -- yes, he told me no more than

13 the summer.

14 Q. He told you no more than the summer?

15 A. Uh-huh (affirmative).

16 Q. Yes?

17 A. Yes.

18 Q. And that was prior to the transfers, right?

19 A. I believe it was the day of the transfers.

20 Q. The day that Cameron actually transferred,

21 or?

22 A. The day that he told Cameron.

23 Q. To transfer?

24 A. (Witness nods head affirmatively.)

25 Q. So he told Cameron it would be for the



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1 Q. He's required to answer the phone?

2 A. No, because much before this was filled out,

3 I had gone back and told the guys that I was wrong.

4 Q. How much prior to April 16th had you told

5 them you were wrong?

6 A. I don't know exactly.

7 Q. Well, how much? I mean two weeks?

8 A. The day after I told them that -- the day

9 after I told them that there would be disciplinary

10 action, the very next day I told them that I had made a

11 mistake.

12 Q. You don't remember when?

13 A. No.

14 Q. You started March 1st or March 3rd, right?

15 A. Yes.

16 Q. April 1st was when the -- the change was

17 taking place, right?

18 A. So it was right around the 1st, it wasn't

19 too long after the 1st.

20 Q. So there was another complaint, then, other

21 than this written form about the change in on-call pay

22 that occurred on or about April 1st by both Cameron and

23 Ray?

24 A. I don't -- I'm not aware of one.

25 Q. Well, do you have a date when they first

110

1 complained about the change in call pay, do you know when

2 that was?

3 A. I probably told them a day or so -- I think

4 it was only a day or two before the 1st. So when I told

5 them, that's when it all started escalating, but I don't

6 know why this -- they didn't fill this out until this

7 date.

8 Q. Did you get a copy of this when it was

9 filed?

10 A. No.

11 Q. When did you first see this document?

12 A. During Ray Burnette's disposition (sic).

13 MS. BIVINS: Deposition.

14 BY THE WITNESS: (Resuming)

15 A. Deposition.

16 Q. Okay. Look down at line three. Mr.

17 Burnette wrote, quote: The threat of disciplinary action

18 was made to Cameron Edwards, but was regarding both

19 Cameron and myself, on Tuesday, April 1st.

20 A. Yes.

21 Q. So it was Tuesday, April 1st, that you

22 talked about the potential discipline?

23 A. Sounds about right.

24 Q. Okay. And that was the discipline you were

25 mistaken about, right?

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1 A. Yes.

2 Q. Okay. And that would have been

3 approximately 15 days prior to this grievance, right?

4 A. Correct.

5 Q. Now, do you have any recollection as to why

6 Mr. Burnette went to Human Resources despite your

7 assurance and your apology?

8 A. Because they wanted -- they were -- I

9 believe it was because they lost the money for the call

10 pay.

11 Q. Okay. And then sometime after this,

12 Ms. Cummings investigates, right?

13 A. Sounds about right, yeah.

14 Q. Okay. Did you tell Ms. Cummings that you

15 had already apologized to Ray and Cameron when you met

16 with her?

17 A. I'm sure I did.

18 Q. Would have been an important detail, right?

19 A. Uh-huh (affirmative).

20 Q. Yes?

21 A. Yes.

22 Q. Did you admit to her that you were wrong

23 about your disciplinary action statement to them?

24 A. I probably did not say I was wrong, I

25 probably said that that is what I believed John Cummings

112

1 told me.

2 Q. And he would have told you back on April

3 1st, approximately --

4 A. Yes.

5 Q. -- that you were wrong, right?

6 A. Yes. But I'm not -- I was not so sure I was

7 wrong, I thought maybe that's what he told me still.

8 Q. You're kind of taking the bullet on this

9 one, I guess, right?

10 A. It appears as though.

11 Q. You didn't do anything wrong?

12 A. No, I'm not saying that. I maybe should

13 have -- I don't know. Either he -- either I

14 misunderstood him, or that he told me that, and he was

15 mistaken himself; one of us is, I'm not sure who.

16 Q. He's trying to get you in trouble rather

17 than him?

18 A. I'm not -- I didn't say that.

19 Q. It could be?

20 A. Could be. I don't know.

21 Q. Possible?

22 A. I don't know.

23 Q. Did Mr. Cummings ever tell you that --

24 whether or not he was embarrassed in a Board Room

25 about this incident in any way?

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1 A. No.

2 Q. Would you read the next page at line four.

3 It says: Which Northside Hospital rules, regulations, or

4 practices did your supervisor indicate that you violated.

5 Do you see that?

6 A. Uh-huh (affirmative).

7 Q. Yes?

8 A. Yes.

9 Q. The complaint here by Mr. Burnette is, quote

10 -- the number 1, do you see that, the first one?

11 A. Yes.

12 Q. "The Northside Hospital, policy in quotes,

13 that was violated was the hiring of Paul Schempp." Is

14 that what it says?

15 A. Yes.

16 Q. Okay. You would agree with me that

17 Mr. Burnette had complained at least on April 16th, 2003,

18 about the failure to post your position for which you

19 were hired into?

20 A. Yes.

21 Q. And he would be fired about a month later,

22 right?

23 A. Yes.

24 Q. Subpart 2 there. Quote: The other practice

25 that was violated is we were instructed we were no longer

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1 on call because we were not eligible, end quote. Is that

2 what it says -- oh. For standing [sic] pay due to the

3 fact we were hourly employees. Is that what it says?

4 A. Yes.

5 Q. Okay. The next line it says: Most of the

6 employees on call for the hospital are hourly and receive

7 standby pay. Is that what it says?

8 A. Yes.

9 Q. Is that a true statement? Most --

10 A. I don't know.

11 Q. Most of the employees, whether or not

12 they're hourly or not?

13 A. I don't know.

14 Q. Do other hourly employees receive standby

15 call pay?

16 A. Yes.

17 Q. It just so happens that the -- the

18 department you work in, Mr. Cummings has decided not to

19 allow that to occur, right?

20 A. I don't think so, I think Larry's an hourly

21 employee.

22 Q. Good point, good point. I'll break it down

23 even further. The only two employees that you know of

24 that are hourly within the Northside Hospital

25 organization that don't receive standby on-call pay were

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1 Ray and Cameron?

2 A. No.

3 Q. Who else?

4 A. All the guys at the main campus.

5 Q. All the guys at the main campus.

6 A. There was a lot of them. I don't know all

7 of their names, I know some of them.

8 Q. Do you know if they're called in the middle

9 of the night to come in and work?

10 A. I'm told they are.

11 Q. Is there any kind of consequence if they

12 don't come in?

13 A. No, I don't believe there is.

14 Q. They can elect not to come in?

15 A. Yes.

16 Q. So how do you know that they're available

17 24/7, I guess?

18 A. I talk to them sometimes when I'm down

19 there, their managers told me.

20 Q. Okay. Okay. So you have personal --

21 A. They're not available 24/7, but they can be

22 called 24/7.

23 Q. But they're required to have on their --

24 their pager 24 hours a day.

25 A. I don't know about that.

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1 Q. Are they required to have their cell phone

2 on?

3 A. I don't know.

4 Q. Are they required to be reached, be able to

5 be reached within that 24 hours they're on call?

6 A. Are we -- I don't know, are we talking about

7 the regular guys or the on call guys?

8 Q. The regular guys.

9 A. No, they're not required.

10 Q. But the regular guys are the ones who do the

11 work, right?

12 A. Yes.

13 Q. Regular guys like Ray and Cameron?

14 A. Yes.

15 Q. So they are called, in your knowledge, in

16 the middle of the night to come in and answer calls by

17 people like yourself down in Atlanta who assign them

18 work?

19 A. Yes.

20 Q. And they have the option of not coming in

21 down there?

22 A. Yes.

23 Q. They have the option of not answering the

24 phone?

25 A. Yes.

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1 Q. If they come in when people like you assign  
2 them work down in Atlanta, do they receive overtime?  
3 A. I believe so.  
4 Q. Do they receive any other compensation other  
5 than overtime?  
6 A. I think they get the two-hour minimum as  
7 well.  
8 Q. Okay. So when you bring in somebody like  
9 Cameron up here, or Larry Presley -- what's his name?  
10 A. Castleberry.  
11 Q. Larry Castleberry. There's no --  
12 A. Oh, Pendley. Pendley.  
13 Q. Pendley. When you bring in people like  
14 Larry Pendley or Cameron here in the Northside Cumming  
15 location, what do they receive for a middle of the night  
16 job?  
17 A. I don't believe I've ever had to call anyone  
18 in the middle of the night.  
19 Q. Okay. What do they receive if they're  
20 called in after their normal working hours?  
21 A. They receive two hours pay, and if that --  
22 if they -- if that makes them go over 40 for the week,  
23 then they get time-and-a-half for those two hours, and if  
24 they stay longer than two hours they get paid for however  
25 much longer than two hours.

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1 Q. At time-and-a-half?  
2 A. Yeah, if they've been over 40 that week.  
3 Q. Okay.  
4 MR. PANKEY: I'd like to look at my  
5 notes.  
6 (Whereupon, a break was taken.)  
7 BY MR. PANKEY: (Resuming)  
8 Q. Okay. I have a question about one of the  
9 Interrogatory Responses. I'll just say I'm not going to  
10 make it an exhibit, I'm just going to ask you a question.  
11 A. Okay. Let me turn this off. I'm sorry, I  
12 thought it was off.  
13 Q. Hey, you're on call. This is the  
14 Defendant's Responses to the First Continuing  
15 Interrogatories to Defendant; it's something provided to  
16 us by your lawyers. I don't even know if you've seen it,  
17 but I just want to ask if you agree with Interrogatory  
18 Number 16. The question was -- do you see Number 16  
19 there?  
20 A. Uh-huh (affirmative).  
21 Q. Number 16, could you read the question for  
22 us?  
23 A. Number 16?  
24 Q. Uh-huh (affirmative).  
25 A. Please identify each reason why Plaintiff's

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1 call pay was eliminated.  
2 Q. Okay. And if you'll take the time to read  
3 the Answer that was given to us.  
4 A. Defendant responds that Plaintiff's call pay  
5 was eliminated because of the decision that Plaintiff  
6 would no longer be required to respond to maintenance  
7 calls after hours.  
8 Q. Okay. And that Response, is that a true  
9 statement?  
10 A. I believe so, yes.  
11 Q. Is that the reason Mr. Burnette's call pay  
12 was eliminated?  
13 A. Yes.  
14 Q. Because he was no longer required?  
15 A. Yes.  
16 Q. Okay. So the distinction we're making here  
17 is he was no longer required, but he could if he wanted  
18 to answer the call, right?  
19 A. Yes.  
20 Q. But if he chose to answer the call, he would  
21 not be receiving on-call pay, he would be paid separately  
22 for coming in if he chose to?  
23 A. Correct.  
24 Q. Okay.  
25 MR. PANKEY: That's all I have.

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1 MS. BIVINS: Okay. I just have a few  
2 follow-up questions.  
3 DIRECT EXAMINATION  
4 BY MS. BIVINS:  
5 Q. Mr. Schempp, you were asked questions about  
6 your experience prior to coming to Northside. Prior -- I  
7 know you testified that you had worked for Cousins.  
8 Prior to Cousins, did you have any supervisory  
9 experience?  
10 A. Yes.  
11 Q. Okay. Where did you obtain supervisory  
12 experience prior to working for Cousins Properties?  
13 A. At Norwalk Care & Rehabilitation Center, as  
14 well as Design Construction.  
15 Q. Okay. What type of company was Norwalk?  
16 A. It was a 130-bed long term health care  
17 facility.  
18 Q. Okay. What were your job duties there?  
19 A. I was a maintenance supervisor there.  
20 Q. Okay. How many employees did you supervise?  
21 A. One.  
22 Q. Okay. Was that the only long term care  
23 facility you worked at prior to Cousins?  
24 A. No, I had worked at Southpark Manor, was my  
25 first job, full-time job I ever had.

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1 Q. Okay. Did you work in a supervisory  
2 capacity there?  
3 A. No.  
4 Q. Okay. What were your job duties there?  
5 A. My job duties there were very similar to Ray  
6 and Cameron's job duties, just -- just a maintenance  
7 person.  
8 Q. Okay. How long did you work at that  
9 particular job?  
10 A. Four years.  
11 Q. Okay. Any other supervisory jobs prior to  
12 going to work for Cousins?  
13 A. Design Construction.  
14 Q. I'm sorry?  
15 A. Design Construction.  
16 Q. And what was Design Construction?  
17 A. It was a custom home building company, and  
18 my job was to supervise the installation of heating and  
19 air conditioning equipment.  
20 Q. And how many employees did you supervise  
21 there?  
22 A. Between five and seven.  
23 Q. Okay. Now, what year did you go to work for  
24 Cousins?  
25 A. 1998.

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1 Q. Okay. And how long did you work for them?  
2 A. Just shy of five years.  
3 Q. Okay. Did you have any supervisory  
4 responsibilities while you worked with Cousins?  
5 A. Yes.  
6 Q. What were your -- the extent of your  
7 supervisory responsibilities?  
8 A. It fluctuated a lot with buildings and what  
9 my position was, but I supervised anywhere from one to  
10 twelve people.  
11 Q. Okay. What was your first position with  
12 Cousins?  
13 A. Grade II engineer.  
14 Q. Okay.  
15 A. Which is general maintenance.  
16 Q. Oh. What kind of company is Cousins?  
17 A. Cousins is a real estate investment trust.  
18 They manage -- own and manage buildings. My particular  
19 division was Medical Office Division, so my buildings  
20 were medical office buildings.  
21 Q. And when you were -- you said chief  
22 engineer?  
23 A. Yes.  
24 Q. How many buildings were you responsible for  
25 at that point?

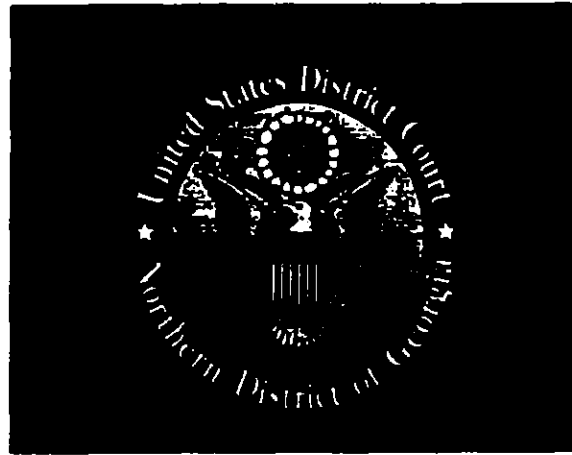
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1 A. At one point I had 12.  
2 Q. Twelve medical buildings?  
3 A. Yes.  
4 Q. Okay. Did Northside Hospital utilize any of  
5 the buildings that you managed?  
6 A. They were the major tenant in three of my  
7 buildings.  
8 Q. And which three buildings were those?  
9 A. Meridian Mark Plaza, Northside Alpharetta  
10 Building A, Northside Alpharetta Building C, and  
11 Northside Alpharetta Building B. I'm sorry, so it was  
12 four of my buildings.  
13 Q. And what is it that you did in the  
14 management capacity in terms of the buildings?  
15 A. I managed the records for the building, the  
16 J-CO compliance for my tenants that needed to be J-CO  
17 compliant.  
18 Q. You mean Joint Commission?  
19 A. Joint Commission, yes. And I also was the  
20 liaison between the construction, the tenant  
21 construction, and the tenants of the building.  
22 Q. Did you have an opportunity to work with  
23 Northside management when problems came up with the  
24 building --  
25 A. Yes.

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1 Q. -- or they needed things fixed and stuff?  
2 A. Yes.  
3 Q. And was that throughout the time you worked  
4 there at Cousins?  
5 A. Yes.  
6 Q. Okay. And you mentioned Freda Hardage; how  
7 is it that you came to know Ms. Hardage?  
8 A. She was -- she was the, let's say, the  
9 highest up. She was directly responsible for the  
10 Alpharetta campus.  
11 Q. Okay.  
12 A. For Northside's holdings at the Alpharetta  
13 campus.  
14 Q. So she basically oversaw Northside's  
15 interests --  
16 A. Yes.  
17 Q. -- at the Alpharetta campus?  
18 A. Correct.  
19 Q. The Alpharetta campus, did you testify it  
20 was an outpatient surgery center?  
21 A. Alpharetta was not, Meridian Mark was.  
22 Q. Meridian Mark. Who -- which Northside  
23 official was over Meridian Mark, do you recall?  
24 A. Marie Philpots (ph).  
25 Q. Okay. That outpatient center, do you know

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**Affidavit of** Collier



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	FILE NO. 1:03-CV-2337-ODE
v.	)	
	)	
NORTHSIDE HOSPITAL,	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF TERESA DAWSON-COLLIER**

I, Teresa Dawson-Collier, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 21 and subject to no infirmities that would preclude me from collecting or recounting information contained in this Declaration. All information contained herein is made directly of my own personal knowledge, and if called as a witness, I would testify competently thereto under oath.

2. I am a resident of the State of Georgia, and am employed as Employee Relations Manager at Northside Hospital.

3. The Company's Human Resources records show that the Maintenance/Safety Coordinator position filled by Paul Schempp was posted at Northside's main campus on February 2, 2003 and was filled on February 25, 2003. (See Exhibit A).

4. On or about April 29, 2003, Sara Cummings issued a report regarding grievances submitted by Douglas Burnette and

Cameron Edwards. I reviewed the report, verified with Ms. Cummings, and approved the conclusions and recommendations that were written in the report before it was issued. In the report, we made several recommendations, including that call pay be reinstated for Mr. Burnette and Mr. Edwards. We recommended, but did not require, that call pay be reinstated out of fairness to Mr. Burnette and Mr. Edwards who had received such pay in the past. However, we did not find that the call pay needed to be reinstated for legal reasons.

5. I have read the foregoing Declaration and declare under penalty of perjury that it is true and correct.

This 23rd day of March, 2004.

  
TERESA DAWSON-COLLIER

FEB 03 2003

# **NORTHSIDE HOSPITAL EMPLOYMENT REQUISITION**

HR USE ONLY

Date Posted 2/6/03  
 Date Filled Paul Schenck  
 New EE Name 2/25/03

Requisition Number 5537

Date 1/29/03 Department Facilities Services Dept # 830 - Forryth

Job Title Coordinator Job Code 7039 Pay Grade AS17 Shift Hours DAY Hours/Pay Period 80

Shift Assignment: (Check normally scheduled work days)

☒ Monday ☒ Tuesday ☒ Wednesday ☒ Thursday ☒ Friday ☐ Saturday ☐ Sunday

Position Status: (Check One)

☒ Full Time ☐ Part Time ☐ Temporary ☐ Weekend Plan ☐ RESP ☐ Flat Rate ☐ Per Diem ☐ Resource

Vacancy caused by transfer or termination of: (Name) Ken Boyles - Dir. of Eng'r for Baptist Medical Ctr

\* New position from: (Check One)

☐ Volume ☐ Contingency

Who will interview? Name: Vahn Cummings ext: 8034

- \* 1. Complete Position Change Form (Blue Form).  
 2. Attach an approved contingency Request form.

## **Position Availability Worksheet (Flexible & Fixed Departments)**

A. Average Flexible Budget FTE's (Previous 3 months: \_\_\_\_\_) A) \_\_\_\_\_  
 B. Current Month Actual Paid FTE's (From Flexible Budget Report) B) \_\_\_\_\_  
 C. FTE's Available (A - B = C) C) \_\_\_\_\_  
 D. Number of FTE's on this Requisition (80hrs/pp = 1 FTE; 48hrs/pp = 0.6 FTE; etc.) D) \_\_\_\_\_  
 E. Number of FTE's in process from previous requisitions  
 (Total number FTE's in process of recruitment as of this date) E) \_\_\_\_\_  
 F. Number of FTE's on unpaid LOA (DO NOT INCLUDE CONTINGENCY LEAVES) F) \_\_\_\_\_  
 G. FTE Variance (C - D - E - F = G) G) \_\_\_\_\_

### **NOTE:**

If "G" is 0 or greater, sign this form and proceed with hiring.

- If "G" is negative:
1. Complete Position Change Form (blue form)
  2. Attach an approved Gross Margin Analysis/Contingency Request form to this requisition.

### **Comments:**

Northside 0054

Approvals:

Director/Manager

Date

Division Vice President

Date



ORIGINAL

FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

MAR 23 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk  
By: *7. P. K. R. R.*  
Deputy Clerk

DOUGLAS BURNETTE, )  
 )  
Plaintiff, ) CIVIL ACTION  
 ) FILE NO. 1:03-CV-2337-ODE  
v. )  
 )  
NORTHSIDE HOSPITAL, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**NORTHSIDE HOSPITAL'S MEMORANDUM OF LAW**  
**IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Northside Hospital ("Defendant" or "Northside"), by and through the undersigned counsel and files this Memorandum of Law pursuant to Fed. R. Civ. P. 56 in support of its Motion for Summary Judgment.

**I. SUMMARY OF THE CASE**

This is an employment discrimination case in which Plaintiff (over 40) alleges he was discriminated against on the basis of his age in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq. Specifically, Plaintiff contends he was denied a promotion based on his age, even though he did not apply for the position in question. He further alleges that he suffered retaliation and was "constructively discharged" when Defendant temporarily reassigned him and a co-worker to one of its other facilities

*18*

and subsequently terminated him for refusing to accept the reassignment. The co-worker, on the other hand, accepted the reassignment and remains employed by Defendant. He also contends that Defendant violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, when it eliminated his on-call duties.

Contrary to Plaintiff's allegations, however, the record evidence shows that Plaintiff's claims have no factual or legal basis. Indeed, it is undisputed that Plaintiff was treated no differently than his co-worker Cameron Edwards (under 40) who was also rejected for promotion and temporarily reassigned, and thus Plaintiff cannot contend that Northside made any decisions on the basis of age. Furthermore, Plaintiff and Edwards were temporarily reassigned because they did not get along with their manager, not because of retaliation or any other unlawful purpose. Indeed, two employees from the Atlanta campus were reassigned to the Forsyth campus while Edwards worked in Atlanta; there is no evidence that these two employees ever complained about anything. Moreover, Plaintiff was terminated because he refused his temporary reassignment as directed by his manager, whereas Edwards accepted the temporary reassignment and remained employed. Finally, Plaintiff's FLSA claims have no merit because Defendant was not prohibited under the FLSA from eliminating his or Edwards' on-call duties. Because Plaintiff's

claims are unsupported by the record or extant case law, Defendant is entitled to summary judgment on all claims.

**STATEMENT OF FACTS**

**A. Plaintiff's Employment with Georgia Baptist**

In 1989, National Healthcare, Inc. hired Plaintiff to work as a maintenance helper<sup>1</sup> at its hospital in Cumming, Georgia (Forsyth County) and, in 1992, Georgia Baptist ("GB") bought the hospital. (Burnette dep. 22-23). Between 1992 and 1999, Plaintiff was a GB hourly employee, working the 7:00 a.m. to 3:30 p.m. shift. (Burnette dep. 27). In or about April 1999, GB relocated to a new facility five miles away. (Burnette dep. 29). In September 1999, Plaintiff assumed all of the maintenance department's on-call duties through to January 2000. (Burnette dep. 32)<sup>2</sup>. When Plaintiff was on-call, GB required him to leave a number where he could be reached and to return to the hospital within an hour when called. (Burnette dep. 33, 41, 43). His supervisor would make the decision about which calls required

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<sup>1</sup> Plaintiff held no professional licenses or certificates and had only supervised one employee before being hired. (Burnette dep. 18, 49).

<sup>2</sup> For purposes of this Motion, all of the Plaintiff's allegations are taken as true. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Plaintiff's after-hours<sup>3</sup> attention or which calls could wait until Plaintiff's regular shift. (Burnette dep. 44-45).

When Plaintiff was on call, he received \$3.50 per hour for the time he spent on call after his regular shift, whether or not he actually returned to the hospital to work. (Burnette dep. 41-43)<sup>4</sup>. Whenever Plaintiff did return to work after-hours, he received two hours of premium pay whether he worked a full two hours or not. (Id.) Plaintiff states that there was never any time that he was not compensated when he was on call. (Burnette dep. 34). In or about January 2000, GB hired Bob Murret, another maintenance assistant, and he and Plaintiff rotated on-call duties. (Burnette dep. 37). At his supervisor's direction, Plaintiff maintained a monthly on-call calendar. (Burnette dep. 37-38).

## **B. Northside Purchases Georgia Baptist.**

### **1. The Maintenance Department in Transition.**

In October 2002, Northside purchased GB's Forsyth facility ("Forsyth facility"). As part of the transaction, Plaintiff and other GB employees were retained by Northside. (Burnette dep. 73-75, 83-84). A few months before Northside's purchase was

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<sup>3</sup> After-hours work in this context means any hours not included in Plaintiff's regular shift.

<sup>4</sup> On a weekday, Plaintiff earned about 15 hours worth of "call pay" and on a weekend day he earned twenty-four hours' worth. (Burnette dep. 34, 42-43).

finalized, Larry Castleberry (over 40), a long-time chief engineer at Northside's main campus in Atlanta, was transferred from the Atlanta campus to the Forsyth maintenance department to help with the transition. (Burnette dep. 46-47; Cummings dep. 11). Also, in February 2002, GB hired Cameron Edwards to replace Bob Murret who had transferred to another department. (Burnette dep. 48-49). As of October 2002, Plaintiff and Edwards reported to Castleberry, who became the temporary manager when the prior manager left. (Burnette dep. 83, 87; Cummings dep. 11-12). During this transition, Plaintiff continued to maintain the on-call calendar and alternated on-call duties with Edwards. (Burnette dep. 50-51). Plaintiff admits he did not experience any changes in his salary or his job duties when Northside first purchased the Forsyth facility. (Burnette dep. 84-86)<sup>5</sup>.

2. Northside Implements Changes To Plaintiff's Department.

a. Paul Schempp is hired.

On March 3, 2003, Northside hired Paul Schempp (under 40) as the permanent maintenance manager ("Maintenance/Safety Coordinator") for the Forsyth facility. (Schempp dep. 5-6, 8).

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<sup>5</sup> His title changed, however, from assistant manager to Plant Stationary Engineer III (non-exempt). (Id.)

Plaintiff claims that he first saw the posting for Schempp's position at the Forsyth facility on February 28, 2003. (Burnette dep. 88). Plaintiff admits, however, that in mid-February, Castleberry informed Plaintiff and Edwards that a new maintenance manager was being hired. (Burnette dep. 87-88, 92-93). It is undisputed that between the time he spoke with Castleberry in mid-February and the time Schempp began working on March 3<sup>rd</sup>, Plaintiff never went to anyone in Human Resources ("HR") or management to obtain more information about the Maintenance/Safety Coordinator position, nor did he attempt to apply for the job. (Burnette dep. 91-96). In fact, Plaintiff never applied for any job or promotion during the fourteen years he worked at the Forsyth facility. (Burnette dep. 49).

According to HR records, the Maintenance/Safety Coordinator position was posted at Northside's main campus<sup>6</sup> on February 2, 2003 and was filled on February 25, 2003. (Aff. Collier ¶13; Cummings dep. 31). Northside's Facilities Services Director, John Cummings (over 40), who was based at the Atlanta campus, made the final decision to hire Schempp. (Cummings dep. 6). Cummings interviewed three or four candidates before

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<sup>6</sup> Schempp saw the job posted at Northside's employment office in Sandy Springs. (Schempp dep. 7).

selecting Schempp. (Cummings dep. 27)<sup>7</sup>. At the time Cummings selected Schempp for the job, he did not know Plaintiff (and therefore, did not know Plaintiff's age) and was not aware that Plaintiff wanted to apply. (Cummings dep. 159).

b. Cummings Eliminates Plaintiff's and Edwards' On-Call Duties.

As the Facilities Services Director, Cummings had responsibility for the maintenance departments at both the main Atlanta campus and the Forsyth facility. (Cummings dep. 5-6). At the Atlanta campus, only maintenance managers and supervisors had on-call duties and received call pay. (Cummings dep. 14, 39-40, 45-46). Non-supervisory maintenance workers like Plaintiff and Edwards were not required to be on call and thus did not receive call pay. (Id.) If, however, a non-supervisory, maintenance worker was contacted by a manager for after-hours work and agreed to come in, then he would receive any applicable overtime pay and a two-hour minimum. (Id.) Ultimately, Cummings wanted to bring the Forsyth facility in line with this policy. (Cummings dep. 38-39). As part of the purchase agreement

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<sup>7</sup> Prior to his hire, Schempp worked almost six years as an engineer, including chief engineer, for Cousins Properties, during which time he provided maintenance support to a hospital for two years and to other medical facilities the remaining three to four years. (Schempp dep. 66-70). Prior to that, Schempp worked for long-term care facilities. (Schempp dep. 120). Schempp held a refrigerant license and had supervised up to eight employees during his career. (Schempp dep. 66, 120-21).

with GB, however, Northside could not change any former GB employee's compensation for at least six months or until April 2003. (Burnette dep. 135-36; Cummings dep. 38-39, 133). As early as October 2002, however, Cummings told Lynn Jackson, Forsyth's hospital administrator, and Castleberry, that he planned on making these changes effective April 1<sup>st</sup>. (Cummings dep. 11, 38-39)

Thus, at the end of March/first of April 2003, Cummings instructed Schempp to advise Plaintiff and Edwards that, after March, they would no longer be on call or receive call pay. (Schempp dep. 16, 20; Cummings dep. 12, 38). Schempp first shared this information with Edwards because Plaintiff was absent. (Burnette dep. 97-98, 100-01; Schempp dep. 20-21). Schempp explained that he and Castleberry would be on call and, if an after-hours call arose, they might call upon Plaintiff or Edwards, who would have the option to come in and perform the work. (Burnette dep. 101-02, 130; Schempp dep. 79-80, 115-16, 119). In effect, Plaintiff and Edwards would no longer receive the \$3.50/hr call pay and would only be paid the two hour premium and overtime if they agreed to perform tasks after their shift ended. During his conversation with Edwards, Schempp also mistakenly advised that Edwards and Plaintiff would be disciplined if they refused to take phone calls after-hours.



(Burnette dep. 105; Schempp dep. 21-24, 50, 110-11; Cummings dep. 44-46).

Plaintiff first learned of these changes from Edwards, and then spoke with Schempp in-person. (Burnette dep. 97-98, 100-02; Schempp dep. 76-77). He told Schempp that he believed the changes went against hospital policy, including Schempp's statement to Edwards about discipline for refusing phone calls. (Burnette dep. 101-02). Within a day of these conversations, Cummings advised Schempp that his statement about discipline was incorrect and that Edwards and Plaintiff were not required to answer phone calls after their shift, nor would they be subject to discipline for refusing to take calls. (Cummings dep. 41-44; Schempp dep. 50-51). It is undisputed that Schempp immediately informed Plaintiff and Edwards of this error. (Burnette dep. 108; Schempp dep. 50-51, 63-64; Cummings dep. 46). Accordingly, Plaintiff understood that he could not be disciplined for refusing to answer his phone after his shift ended. (Burnette dep. 107-08).

3. Plaintiff and Edwards File a Grievance With HR.

Shortly after their respective discussions with Schempp, Plaintiff and Edwards complained to Carrie O'Kray, HR representative, about the elimination of their on-call duties and call pay. (Burnette dep. 68, 108-10). O'Kray advised

Edwards and Plaintiff to submit a formal grievance form. (Burnette dep. 110-12). On or about April 16, 2003, Plaintiff and Edwards submitted nearly identical grievances which complained that: (1) the elimination of their on-call duties/call pay was against hospital policy, (2) Schempp improperly threatened them with discipline, (3) Schempp's position was improperly posted, and (4) Schempp was inexperienced. (Burnette dep. 112-13, Ex. 8). In effect, they were focusing all of their anger at losing the on-call pay, which had amounted to approximately \$6,000 to \$10,000 per year, on their immediate supervisor, Schempp. (Burnette dep. 126).

On or about April 21, 2003, Cummings initiated a meeting with Plaintiff, Edwards, Castleberry and Schempp to attempt to resolve some of the tension among them. (Burnette dep. 123; Cummings dep. 37, 163-64). During the meeting, Cummings explained that he wanted to run the Forsyth maintenance department like the Atlanta main campus. (Burnette dep. 133). In that regard, call pay was only available to managers and supervisors who were required to be on-call.

In addition, the attendees also discussed the hiring of Schempp as the department supervisor. (Burnette dep. 124-25). According to Cummings, Plaintiff and Edwards were extremely upset that Schempp had replaced Castleberry as their supervisor.

(Cummings dep. 11-12). They claimed that the position had not been properly posted and that Schempp was not "qualified" to be their supervisor. (Burnette dep. 120-21, 125, Ex. 8). However, neither Plaintiff nor Edwards claimed that he should have been hired for the position. (Id.) Rather, they were obviously irritated by Schempp's management style and seemed to be looking for a way to get him removed as their supervisor. (Cummings dep. 12, 26, 30). The meeting was very contentious and Plaintiff was angry and red in the face throughout. (Cummings dep. 30). At the conclusion of the meeting, Cummings agreed to look into whether Schempp's position was properly posted. (Cummings dep. 30-32). Cummings later learned that the job was posted in accordance with Northside policy at the main campus. (Id.) He told Schempp to pass this information on to Plaintiff and Edwards. (Cummings dep. 54).

Plaintiff and Edwards were not satisfied with Cummings' refusal to reverse his decisions to hire Schempp and eliminate the on-call pay. Therefore, about a week after this contentious meeting occurred, on or about April 29, 2003, Plaintiff and Edwards met with Sarah Cummings<sup>8</sup> and Teresa Dawson Collier from HR to discuss their grievance. (Burnette dep. 117-18, 123;

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<sup>8</sup> Sarah Cummings is no relation to John Cummings.

Cummings dep. Ex. 2). At this meeting, Plaintiff and Edwards discussed their concerns about call pay, the posting of Schempp's position, and what they perceived to be Schempp's poor management style and weak hospital knowledge. (Id.) Thereafter, Ms. Cummings spoke with Schempp. (Schempp dep. 57-60; Cummings dep. 53-54). Based solely upon her conversations with Plaintiff, Edwards, and Schempp, Ms. Cummings made several recommendations that reflected her obvious sympathy for Plaintiff and Edwards. Those recommendations included: that call pay be reinstated for engineers (as a matter of fairness, not due to any legal requirement); that Plaintiff and Edwards report to Larry Castleberry instead of Paul Schempp; and that Schempp attend "leadership training." (Cummings dep. 53, Ex. 2; Aff. Collier ¶4). She did not make any finding that Schempp's position was improperly posted. (Id.) Ms. Cummings' recommendations were not binding on Mr. Cummings, who was not even consulted during the investigation. (Cummings dep. 57-60). Indeed, Mr. Cummings was not pleased that Ms. Cummings was effectively usurping his authority over his department without taking the time to discuss the matter with him. (Id.)

4. Cummings Temporarily Reassigns Plaintiff and Edwards To The Main Campus.

Sometime between May 2<sup>nd</sup> and 5<sup>th</sup>, Mr. Cummings spoke with Dwight Hill, Vice President, and Bridget Green, HR Director (and Ms. Cummings' supervisor), about Plaintiff's and Edwards' poor attitudes, their grievance, their overt dislike of Schempp, as well as his displeasure at Sarah Cummings' one-sided investigation of Plaintiff's and Edwards' grievances. (Cummings dep. 17-21, 57-60). Green informed Cummings that he was not required to implement the recommendations issued by Ms. Cummings. (Cummings dep. 59-60). Green also suggested that a temporary reassignment of Plaintiff and Edwards to the main campus would be a good idea to help ease tensions in the Forsyth department. (Cummings dep. 111-12, 166). Cummings agreed, and he also believed the temporary reassignment would benefit Plaintiff and Edwards insofar as they would be able to observe how the Atlanta maintenance department operated, and Cummings' goal was to operate the Forsyth maintenance department in the same manner as the Atlanta maintenance department. (Id.) The reassignment would involve no change in pay or responsibilities. (Id.)

On Friday, May 16, 2003, Mr. Cummings met with Plaintiff and informed him that both he and Edwards would be temporarily

reassigned to the Atlanta campus beginning Monday, May 19<sup>th</sup>.<sup>9</sup> In turn, two maintenance employees from the Atlanta campus would be reassigned to Forsyth to handle Plaintiff's and Edward's duties. (Burnette dep. 137). In response, Plaintiff became upset and told Cummings that the reassignment did not "make sense" because Plaintiff had the responsibility to take his child to school. (Burnette dep. 138). However, he did not ask for any delay in the reassignment until after the school year was over--in just two weeks. (Burnette dep. 136-39, 142).

##### 5. Plaintiff Is Terminated For Refusing Reassignment.

It is undisputed that Plaintiff did not report for work on Monday, May 19<sup>th</sup>, as Cummings directed, but instead called in sick, submitting a doctor's note excusing him from work for three days (May 19<sup>th</sup>-May 21<sup>st</sup>) with a return date of Thursday, May 22<sup>nd</sup>. (Burnette dep. 142, 151-52 Ex. 9). Over the weekend and on Monday, May 19<sup>th</sup>, Plaintiff spoke to Schempp and told him he did not want to accept the reassignment. (Burnette dep. 149-50). In response, Schempp told Plaintiff that if he refused to go, it was likely he would be terminated. (Id.) At that point, Plaintiff admits he made up his mind to disobey Cummings' directive to temporary reassignment. (Burnette dep. 150).

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<sup>9</sup> Cummings did not speak with Edwards until Monday, May 19<sup>th</sup>, because he was absent on the 16<sup>th</sup>. (Cummings dep. 80).

On Tuesday, May 20<sup>th</sup>, Plaintiff contacted Ms. Cummings and she advised him to speak to her supervisor, Bridget Green. (Burnette dep. 150-52). Green advised Plaintiff to report to work as instructed, but he did not heed this advice. (Burnette dep. 150-52; Cummings dep. 162).

On May 21, 2003, Plaintiff faxed a letter to HR,<sup>10</sup> stating that he was not accepting the "transfer" because of the increased travel time, childcare and vehicle expenses. (Burnette dep. 154-58, Ex. 10). Plaintiff's letter also alleged retaliation for his complaints about call pay and the job posting issue. (Id.) Additionally, Plaintiff alleged for the first time that he was being discriminated against because he was over the age of 40 and older than Schempp, and because the call pay policies were not followed. (Id.) Plaintiff admitted that he had never complained of age discrimination prior to his May 21<sup>st</sup> letter. (Burnette dep. 159). Plaintiff further conceded that his letter's purpose was not to complain about age discrimination, but to inform Defendant that he was refusing Cummings' temporary reassignment. (Burnette dep. 159, 163).

On May 22<sup>nd</sup>, after his doctor's excuse expired, Plaintiff did not report to work. Therefore, with Green's approval,

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<sup>10</sup> Plaintiff copied the letter to Carrie O'Kray, Sarah Cummings, Bridget Green, Lynn Jackson, Paul Schempp, and John Cummings. (Id.)

Cummings terminated Plaintiff by telephone that day. (Burnette dep. 162-66; Cummings dep. 6-8, 95-96, 116). Immediately upon learning of his termination, Plaintiff drove to Atlanta to file an EEOC charge. (Burnette dep. 167-68; Ex. 12).<sup>11</sup>

In direct contrast to Plaintiff, Edwards obeyed Cummings' instructions and accepted the temporary reassignment to the main campus about two weeks later. Edwards also took his child to school, and he asked Cummings to delay the reassignment for two weeks until after the school year ended. (Burnette dep. 160; Cummings dep. 148-51, 156). Cummings readily accommodated Edwards' request. (Cummings dep. 148-49). After working at the main campus for several weeks over the summer, Edwards returned to the Forsyth facility with no loss of pay, position or seniority. (Cummings dep. 127-28; Schempp dep. 61).

### III. ARGUMENT & CITATION OF AUTHORITY

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file show that there exists no genuine issue as to any material fact, and that the moving party is entitled to

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<sup>11</sup> After his termination, Plaintiff was temporarily replaced by James Waldrip (under 40), an employee from the main campus, who was originally scheduled only to work at Forsyth during Plaintiff's transfer period. (Hugh Silvers took Cameron Edwards' place for the few months he transferred to the main campus). Northside eventually hired Larry Pendley (over 40) on July 1, 2003 as Plaintiff's permanent replacement. (Schempp dep. 88-90).



judgment as a matter of law. Fed. R. Civ. P. 56(c). The mere existence of some disputed fact will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). Where, as here, the non-moving party fails to provide a factual basis sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial, "Rule 56(c) mandates the entry of summary judgment." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Although consideration of a summary judgment motion requires that the evidence be viewed in the light most favorable to the nonmovant, the law does not preclude the granting of such motions under appropriate circumstances. Korman v. HBC Florida, Inc., 182 F.3d 1291 (11<sup>th</sup> Cir. 1999); Terrell v. USAir, 132 F.3d 621, 624 (11<sup>th</sup> Cir. 1998); Johnston v. Henderson, 144 F.Supp.2d 1341, (S.D. Fla. 2001) (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)).

In this case, summary judgment is mandated because there is no evidence on which a reasonable jury could return a verdict for Plaintiff on his claims of age discrimination, retaliation, FLSA violations, or constructive discharge. Indeed, Plaintiff has produced no probative evidence to support any of his claims.

Accordingly, summary judgment should be granted in favor of Defendant. Id.

**A. Plaintiff has Failed to Establish a *Prima Facie* Case of Age Discrimination**

Plaintiff (over 40) alleges that Northside discriminated against him on the basis of his age "by failing to post the position of Maintenance/Safety Coordinator," terminating him on account of age, and by retaliating against him for "speaking out on protected activity in violation of the ADEA." (Complaint, ¶ 33)

To establish a *prima facie* case of discriminatory failure to promote on the basis of age, Plaintiff must prove: (1) he was a member of the protected class, (2) he applied and was minimally qualified for the promotion, and (3) that the position was filled by someone who was sufficiently younger than he that age discrimination would be plausible as a determinative factor. O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 310-12 (1996); Archambault v. United Computing Systems, 786 F.2d 1507, 1512 (11<sup>th</sup> Cir. 1986). If Plaintiff is able to establish a *prima facie* case, the burden then shifts to Defendant to articulate a legitimate, non-discriminatory reason for denying the promotion. Id. Once Defendant carries this burden, Plaintiff must prove by a preponderance of the evidence that the

legitimate reason offered by Northside was a pretext for discrimination. Id., McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804, 93 S. Ct. 1817 (1973).

Here, Plaintiff cannot establish the second prong of his *prima facie* case. First, there is no evidence that Plaintiff ever applied for the position for which Schempp was hired. The record shows that the job was posted on or about February 2, 2003 at Northside's main campus and filled on February 25, 2003. Plaintiff testified that he first learned about the position from Castleberry sometime in mid-February. Although Plaintiff knew about the position as early as mid-February, he admits he made no effort to learn more about the position or express his interest in applying. John Cummings, who interviewed at least four candidates for the position, confirms that he did not know Plaintiff (or his age) at the time and had no knowledge that Plaintiff wanted the position.<sup>12</sup> Extant case law is clear that Plaintiff has no basis to allege discrimination when he never applied or expressed an interest in the position. Cooper v. Southern Co., 260 F.Supp.2d 1278, 1288-89 (N.D. Ga. 2003) (the plaintiff who never applied for the position in question and

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<sup>12</sup> Moreover, Cummings testified that Plaintiff and Edwards were not necessarily concerned that they did not receive the position, but instead were upset that Castleberry was no longer their supervisor. (Cummings dep. 11-12).

never applied for any other position could not sustain a discriminatory failure to promote claim) (citing Evans v. McClain of Georgia, Inc., 131 F.3d 957, 963 (11<sup>th</sup> Cir.1997)). Indeed, while the record is replete with evidence that maintenance managers came and went at the Forsyth facility, Plaintiff admitted he never once applied for any such position through Northside or its predecessor GB. (Burnette dep. 49).

Moreover, even if Plaintiff had been considered for the job, he was not qualified to fill it. Where, as here, a claim of discrimination is based on relative qualifications of the plaintiff and another candidate, the disparities in qualifications are not indicative of discrimination unless those disparities are "so apparent as virtually to jump off the page and slap you in the face." Hall v. Moffett, 2003 WL 1590270 (11<sup>th</sup> Cir. Mar. 28, 2003); Cofield v. Goldkist, Inc., 267 F.3d 1264, 1268 (11<sup>th</sup> Cir. 2001). Although Plaintiff had worked at the Forsyth facility for about fourteen years, he had never supervised more than one person, whereas Schempp had supervised as many as eight employees in his career. (Burnette dep. 18, Schempp dep. 120-21). Further, unlike Schempp, who held a universal refrigerant license, Plaintiff did not hold any professional licenses. (Burnette dep. 31-32, 53; Schempp dep. 66). Thus, there is no evidence in the record that Plaintiff

was so much more qualified than Schempp that an inference of discrimination can be raised. Id.

Finally, Plaintiff has made no showing that Cummings, who was also over the age of forty, was biased against him based on age. Elrod v. Sears, Roebuck and Co., 939 F.2d 1466, 1471 (11<sup>th</sup> Cir. 1991) (the law recognizes that those in the same protected class are not likely to discriminate against another belonging to the same class). Indeed, at the time Cummings hired Schempp, Cummings did not know who Plaintiff was at all.

Most importantly, Plaintiff was treated no differently than Edwards (under 40) who was also not considered for the position filled by Schempp. See Alexander v. Fulton County, Ga., 207 F.3d 1303, 1345-46 (11<sup>th</sup> Cir. 2000) (failure to identify any similarly-situated comparator was fatal to plaintiff's claims of discrimination); Watkins v. Sverdrup Technology, Inc., 153 F.3d 1308, 1315 (11<sup>th</sup> Cir.1998) (explaining that "[t]he most fatal shortcoming ... was that ... Plaintiffs did not identify ... employees similarly situated to themselves"). Thus, other than his apparent disdain for Schempp as a manager and conclusory assertions of discrimination, Plaintiff simply has no basis to allege that Defendant acted with any discriminatory intent in

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selecting Schempp for the Maintenance/Safety Coordinator position, Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11<sup>th</sup> Cir.1990) (plaintiff must "present concrete evidence in the form of specific facts....[m]ere conclusory allegations and assertions will not suffice.") Accordingly, Plaintiff's discriminatory promotion claim must be denied. Id.

**B. Plaintiff Cannot Establish a *Prima Facie* Case of Retaliation under the ADEA**

Plaintiff alleges Northside terminated his employment in retaliation for his May 21, 2003 age discrimination complaint. To establish a *prima facie* case of retaliation under the ADEA, a plaintiff must show that: (1) he engaged in protected activity; (2) he suffered an adverse employment action subsequent thereto; and (3) there was a causal connection between the protected activity and the adverse employment action. Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1328 (11<sup>th</sup> Cir.1998); Meeks v. Computer Assoc. Int'l, 15 F.3d 1013, 1021 (11<sup>th</sup> Cir. 1994); Bates v. Variable Annuity Life Ins. Co., 200 F. Supp.2d 1375, 1383 (N.D. Ga. 2002). Here, Plaintiff admits he never engaged in any statutorily protected activity under the ADEA prior to his letter of May 21, 2003. (Burnette dep. 159). Consequently, as a threshold matter, he cannot assert an ADEA retaliation claim regarding Cummings' March 16<sup>th</sup> directive for him to accept

the temporary reassignment. See James v. MedicalControl, Inc., 29 F. Supp. 749, 753 (N.D. Texas 1998) (plaintiff cannot sustain a retaliation claim if he cannot show he engaged in protected activity before adverse action occurred); Cabiness v. YKK (USA), Inc., 859 F. Supp. 582, 587 (M.D. Ga. 1994).

Plaintiff's retaliatory discharge claim is similarly without merit. Specifically, it is undisputed that on May 19, 2003, two days before he ever complained of age discrimination, Plaintiff failed to appear for work at the Atlanta campus as Cummings directed him to do on May 16th. Furthermore, as of May 20th, one day before he ever complained of age discrimination, Plaintiff admitted that he had definitively decided not to follow this directive. (Burnette dep. 150). Indeed, Plaintiff's May 21<sup>st</sup> letter advised Defendant that he could not "accept a transfer to the Northside Atlanta campus," not for fear of age discrimination, but purportedly because of increased travel time, childcare and vehicle expenses. (Burnette dep. Ex. 10). Since Plaintiff refused to accept the temporary reassignment and did not report to work on May 22<sup>nd</sup>, Defendant was legally justified in terminating his employment. Chaney v. New Orleans Public Facility Management, Inc., 179 F.3d 164, 167-68 (5<sup>th</sup> Cir. 1999) ("The failure of a subordinate to follow the direct order of a supervisor is a legitimate nondiscriminatory reason for

discharging that employee."); Hanley v. Sports Authority, 143 F.Supp.2d 1351, 1361 (S.D. Fla. 2000) (an employee may be terminated for failing to comply with supervisor's order).

Moreover, the timing of Plaintiff's eleventh hour complaint of discrimination is highly suspect. Although Plaintiff alleges he was hard-pressed to drive to Atlanta to report to work on May 22<sup>nd</sup>, no such hardship arose when, after being informed of his termination, he immediately drove to Atlanta to file an EEOC charge. This, coupled with the fact that Plaintiff never complained of age discrimination until May 21<sup>st</sup> indicates that his true motive was to set Defendant up for a lawsuit. Indeed, since Plaintiff refused the reassignment, he admits he knew at least as of May 20<sup>th</sup> that his termination was imminent. (Burnette dep. 150). The Court should not reward such bad faith behavior. See Bennett v. Watson Wyatt & Co., 136 F. Supp.2d 236, 252 (S.D.N.Y. 2001) ("To permit a plaintiff to consistently flout his employer's rules, ...then claim discrimination in a transparent attempt to fabricate a discrimination case will not be countenanced"). Plaintiff's claim should be dismissed.

#### **IV. PLAINTIFF FAILS TO SUSTAIN A CLAIM UNDER FLSA**

According to Plaintiff, Defendant violated the FLSA when Cummings eliminated his on-call duties and thereby his eligibility for call pay. This allegation is wholly without



merit. Under the FLSA, workers are not entitled to pay for being on call as a matter of right. See 29 C.F.R. §§ 553.221 and 785.17. To the contrary, on-call time is only compensable when the employee cannot use the time effectively for his own purposes. Id.

Here, it is undisputed that during the times Plaintiff was on call, he was not required to remain at the hospital, but was only required to leave his contact information and, when called, return to the hospital within an hour's time. (Burnette dep. 33, 41, 43). Many courts have held that such time is not compensable under the FLSA because it is time during which the employee can effectively engage in personal, non-work-related activities. Bright v. Houston Northwest Medical Ctr. Survivor, Inc., 934 F.2d 671 (5<sup>th</sup> Cir. 1991) (on-call time not compensable under the FLSA where only restrictions were that employee remain sober, carry a beeper, and return within twenty minutes of being paged); Wellman v. MCI Telecomm. Corp., Inc., 1991 WL 329562 at \*1 (W.D. Wash. Dec. 5, 1991) (time spent on call, waiting to be engaged is not compensable under the FLSA). Based on this established precedent, Northside was never required to pay Plaintiff or Edwards for being on call and, in fact, went "above and beyond" what was required by the FLSA. Id. Since Northside was not obligated to pay Plaintiff even when he spent time on

call, it logically follows that it was not unlawful for Defendant to eliminate Plaintiff's on-call duties entirely. See Codero v. Turabo Medical Ctr. Partnership, 175 F.Supp.2d 124 (D. Puerto Rico 2001) (not unlawful for employer to decrease amount of compensation for on-call duties).

Moreover, Plaintiff has no grounds for a FLSA retaliation claim based on his internal complaints about call pay. Id. Consider Cordero which is an analogous case. In that case, the plaintiffs repaired electronic and oxygen equipment in a hospital. In this capacity, they were required to be on call and received compensation for such duties. At some point, however, the hospital decided to decrease the amount of call pay and the workers filed an internal grievance. Shortly after the grievance was filed, the defendant terminated all the employees who had complained. The employees alleged retaliation. The Court held that in order to establish a *prima facie* case of retaliation under the FLSA, the plaintiffs had to show that: (1) they engaged in statutorily protected activity, (2) their employer subjected them to adverse action as (3) a reprisal for said protected activity. Id. at 127. The Court held that the plaintiffs had not met the first prong of their *prima facie* case because they never complained that the decrease in call pay was

illegal or a violation of FLSA, but only that the change was unfair. Id. at 128.

Here, Plaintiff and Edwards never alleged that the elimination of their on-call duties and call pay was illegal, only that it was unfair and purportedly against hospital policy. (Burnette dep., Ex. 8). Like the plaintiffs in Cordero, Plaintiff's and Edwards' chief grievance was based on the unfairness of the change, not its legality. Indeed, Plaintiff wanted to know why Castleberry, also an hourly employee, was still able to receive call pay and he was not. (Id.) At no time did Plaintiff or Edwards challenge the decision's lawfulness or threaten to report such changes to any legal entity. Also, Plaintiff admits he received all monies owed to him whenever he was designated as being on call (April 1999-March 2003). (Burnette dep. 34). Accordingly, Plaintiff has no basis for his retaliation claim because his complaints did not constitute "protected activity" under the FLSA. Id. See also Wolf v. Coca-Cola Co., 200 F.3d 1337 (11<sup>th</sup> Cir. 2000) (one-time meeting where possible FLSA violation was raised insufficient to support retaliation claim).

Even if Plaintiff's and Edward's complaints could be construed as protected activity under the FLSA, Defendant had a legitimate and non-discriminatory reason for temporarily

reassigning Plaintiff and Edwards, and then terminating Plaintiff for refusing the reassignment. First, Cummings decided to reassign Plaintiff and Edwards because they were not getting along with their new manager, Paul Schempp. See Bainbridge v. Loffredo Gardens, Inc., 2003 WL 21911063 at \*9 (S.D. Iowa) (it is legitimate and non-discriminatory to terminate an employee who is unable to get along with co-workers). Furthermore, other than reporting to a new location that was not as close by as their current job site, Plaintiff and Edwards would have experienced no change in pay or job duties. Such a reassignment does not result in any tangible detriment and, therefore, is also no basis for a retaliation claim. Doe v. Dekalb County Sch. Dist., 145 F.3d 1441, 1453 (11<sup>th</sup> Cir. 1998) ("Any adversity must be material; it is not enough that a transfer imposes some *de minimis* inconvenience or alteration of responsibilities"); Lawrence v. Wal-Mart Stores, Inc., 236 F. Supp.2d 1314, 1330-31 (M.D. Fla. 2002) (a lateral transfer without a corresponding demotion or other significant detriment is not an adverse action). Moreover, Plaintiff's mere unhappiness about the reassignment is insufficient to support his retaliation claim. Id.

Furthermore, it is undisputed that two maintenance employees from Atlanta, James Waldrip and Hugh Silvers, were

temporarily reassigned to Forsyth at the same time that Plaintiff and Edwards were reassigned to Atlanta, and thus, were treated exactly the same as Plaintiff and Edwards. There is no evidence that the two Atlanta employees made any complaints about their temporary reassignment.

Finally, Plaintiff was terminated because he refused to report to work at his new jobsite. As discussed *supra*, an employee's refusal to follow a management directive is a legitimate reason to terminate him. Moreover, Plaintiff has no evidence that his termination was pretextual because Edwards, who also complained about the call pay issue, was not terminated. In contrast to Plaintiff, Edwards reported to his new job site and returned to the Forsyth facility two months later. Thus, Plaintiff has no basis to allege that his termination was causally related to his complaints about losing call pay and his FLSA claims fail entirely.

V. PLAINTIFF CANNOT ESTABLISH A CLAIM OF CONSTRUCTIVE DISCHARGE

To the extent Plaintiff alleges he was constructively discharged, such claim has no merit and should be denied. The standard for establishing constructive discharge is "quite high," and exceeds the showing made under a theory of hostile environment discrimination. Hipp v. Liberty Nat'l Life Ins.

Co., 252 F.3d 1208, 1231 (11<sup>th</sup> Cir. 2001) (constructive discharge standard is higher than the hostile work environment standard). A plaintiff may succeed on a constructive discharge claim only if he demonstrates that "working conditions were so intolerable that a reasonable person in [his] position would have been compelled to quit." Id. Here, Plaintiff has not made any showing that he was subjected to an environment so hostile that he was forced to leave. Indeed, he admits that he was never subjected to any age-based comments or otherwise disparaged on account of a protected classification. (Burnette dep. 158). Further, while Plaintiff apparently disliked Schempp's and Cummings' decisions, there is no evidence that they were illegally biased against him. It is also doubtful that Plaintiff subjectively believed he was in an unlawful, hostile environment as he never complained of any discrimination until the "last minute" when it appeared that no one would support his efforts to thwart Cummings' temporary reassignment decision.

In regard to his temporary reassignment, Plaintiff's chief complaint was that his travel time would be increased<sup>13</sup>. Such *de minimus* inconveniences, however, do not support a claim for

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<sup>13</sup> Moreover, it is doubtful that Plaintiff traveling to Atlanta was a true hardship, given the fact that he had no problem driving to Atlanta to file an EEOC charge, but somehow was unable to drive to Atlanta for work.

constructive discharge. See Audenreid v. Circuit City Stores, Inc., 97 F.Supp.2d 660, 664-65 (E.D. 2000) (increased travel time insufficient to support constructive discharge claim). The best evidence that the temporary reassignment did not constitute a "constructive discharge" is the fact that Cameron Edwards, James Waldrip, and Hugh Silvers all had their travel time increased by the same temporary reassignment, yet they did not consider the change so "utterly intolerable" that they felt compelled to quit their jobs. To the contrary, all three completed the reassignments without incident. Accordingly, Plaintiff's constructive discharge claim is wholly without merit and should be denied.

#### VI. CONCLUSION

For the foregoing reasons, the Court should conclude that Plaintiff's claims have no merit, and should issue a decision in favor of Northside Hospital.

Respectfully submitted, this 29<sup>th</sup> day of March, 2004.

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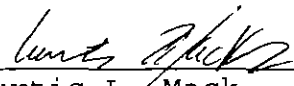
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE, )  
 )  
Plaintiff, ) CIVIL ACTION  
 ) FILE NO. 1:03-CV-2337-ODE  
v. )  
 )  
NORTHSIDE HOSPITAL, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **NORTHSIDE HOSPITAL'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** has been served this 23<sup>rd</sup> day of March, 2004 by first-class mail, postage prepaid, upon the following:

Larry A. Pankey, Esq.  
Laura Horlock, Esq.  
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MAR 23 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk  
By: *F. Puckett* Deputy Clerk

DOUGLAS BURNETTE, )  
 )  
Plaintiff, ) CIVIL ACTION  
 ) FILE NO. 1:03-CV-2337-ODE  
v. )  
 )  
NORTHSIDE HOSPITAL, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**DEFENDANT NORTHSIDE HOSPITAL'S STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Northside Hospital ("Defendant" or "Northside"), by and through the undersigned counsel and files this Statement of Undisputed Facts pursuant to Fed. R. Civ. P. 56 in support of its Motion for Summary Judgment:

1. In 1989, National Healthcare, Inc. hired Plaintiff to work as a maintenance helper at its hospital in Cumming, Georgia (Forsyth County) and, in 1992, Georgia Baptist ("GB") bought the hospital. (Burnette dep. 22-23).

2. Plaintiff held no professional licenses or certificates and had only supervised one employee before being hired. (Plf. 18, 49).

3. Between 1992 and 1999, Plaintiff was a GB hourly employee, working the 7:00 a.m. to 3:30 p.m. shift. (Burnette

18

dep. 27). In or about April 1999, GB relocated to a new facility five miles away. (Burnette dep. 29).

4. In September 1999, Plaintiff assumed all of the maintenance department's on-call duties through to January 2000. (Burnette dep. 32). When Plaintiff was on-call, GB required him to leave a number where he could be reached and to return to the hospital within an hour when called. (Burnette dep. 33, 41, 43).

5. Plaintiff's supervisor would make the decision about which calls required Plaintiff's after-hours<sup>1</sup> attention or which calls could wait until Plaintiff's regular shift. (Burnette dep. 44-45).

6. When Plaintiff was on-call, he received \$3.50 per hour for the time he spent on-call after his regular shift, whether or not he actually returned to the hospital to work. (Burnette dep. 41-43). Whenever Plaintiff did return to work after-hours, he received two hours of premium pay whether he worked a full two hours or not. (Id.)

7. On a weekday, Plaintiff earned about 15 hours worth of "call pay" and on a weekend day he earned twenty-four hours' worth. (Plf. 34, 42-43).

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<sup>1</sup> After-hours work in this context means any hours not included in Plaintiff's regular shift.

8. Plaintiff states that there was never any time that he was not compensated when he was on-call. (Burnette dep. 34).

9. In or about January 2000, GB hired Bob Murret, another maintenance assistant, and he and Plaintiff rotated on-call duties. (Burnette dep. 37). At his supervisor's direction, Plaintiff maintained a monthly on-call calendar. (Burnette dep. 37-38).

10. In October 2002, Northside purchased GB's Forsyth facility ("Forsyth facility"). As part of the transaction, Plaintiff and other GB employees were retained by Northside. (Burnette dep. 73-75, 83-84).

11. A few months before Northside's purchase was finalized, Larry Castleberry (over 40), a long-time chief engineer at Northside's main campus in Atlanta, was transferred from the Atlanta campus to the Forsyth maintenance department to help with the transition. (Burnette dep. 46-47; Cummings dep. 11).

12. Also, in February 2002, GB hired Cameron Edwards to replace Bob Murret who had transferred to another department. (Burnette dep. 48-49).

13. As of October 2002, Plaintiff and Edwards reported to Castleberry, who became the temporary manager when the prior manager left. (Burnette dep. 83, 87; Cummings dep. 11-12).

During this transition, Plaintiff continued to maintain the on-call calendar and alternated on-call duties with Edwards. (Burnette dep. 50-51).

14. Plaintiff admits he did not experience any changes in his salary or his job duties when Northside first purchased the Forsyth facility. (Burnette dep. 84-86). His title changed, however, from assistant manager to Plant Stationary Engineer III (non-exempt). (Id.)

15. On March 3, 2003, Northside hired Paul Schempp (under 40) as the permanent maintenance manager ("Maintenance/Safety Coordinator") for the Forsyth facility. (Schempp dep. 5-6, 8).

16. Plaintiff testified that he first saw the posting for Schempp's position at the Forsyth facility on February 28, 2003. (Burnette dep. 88).

17. Plaintiff admits that in mid-February, Castleberry informed Plaintiff and Edwards that a new maintenance manager was being hired. (Burnette dep. 87-88, 92-93).

18. Between the time he spoke with Castleberry in mid-February and the time Schempp began working on March 3<sup>rd</sup>, Plaintiff never went to anyone in Human Resources ("HR") or management to obtain more information about the Maintenance/Safety Coordinator position, nor did he attempt to apply for the job. (Burnette dep. 91-96).

19. Plaintiff never applied for any job or promotion during the fourteen years he worked at the Forsyth facility. (Burnette dep. 49).

20. According to HR records, the Maintenance/Safety Coordinator position was posted at Northside's main campus on February 2, 2003 and was filled on February 25, 2003. (Aff. Collier ¶3; Cummings dep. 31). Schempp saw the job posted at Northside's employment office in Sandy Springs. (Schempp dep. 7).

21. Northside's Facilities Services Director, John Cummings (over 40), who was based at the Atlanta campus, made the final decision to hire Schempp. (Cummings dep. 6). Cummings interviewed three or four candidates before selecting Schempp. (Cummings dep. 27).

22. Prior to his hire, Schempp worked almost six years as an engineer, including chief engineer, for Cousins Properties, during which time he provided maintenance support to a hospital for two years and to other medical facilities the remaining three to four years. (Schempp dep. 66-70). Prior to that, Schempp worked for long-term care facilities. (Schempp dep. 120). Schempp held a refrigerant license and had supervised up to eight employees during his career. (Schempp dep. 66, 120-21).

23. At the time Cummings selected Schempp for the job, he did not know Plaintiff (and therefore, did not know Plaintiff's age) and was not aware that Plaintiff wanted to apply. (Cummings dep. 159).

24. As the Facilities Services Director, Cummings had responsibility for the maintenance departments at both the main Atlanta campus and the Forsyth facility. (Cummings dep. 5-6).

25. At the Atlanta campus, only maintenance managers and supervisors had on-call duties and received call pay. (Cummings dep. 14, 39-40, 45-46). Non-supervisory maintenance workers like Plaintiff and Edwards were not required to be on-call and thus did not receive call pay. (Id.)

26. If a non-supervisory, maintenance worker was contacted by a manager for after-hours work and agreed to come in, then he would receive any applicable overtime pay and a two-hour minimum. (Id.)

27. Ultimately, Cummings wanted to bring the Forsyth facility in line with this policy. (Cummings dep. 38-39). As part of the purchase agreement with GB, however, Northside could not change any former GB employee's compensation for at least six months or until April 2003. (Burnette dep. 135-36; Cummings dep. 38-39, 133).

28. As early as October 2002, Cummings told Lynn Jackson, Forsyth's hospital administrator, and Castleberry, that he planned on making these changes effective April 1<sup>st</sup>. (Cummings dep. 11, 38-39)

29. At the end of March/first of April 2003, Cummings instructed Schempp to advise Plaintiff and Edwards that, after March, they would no longer be on-call or receive call pay. (Schempp dep. 16, 20; Cummings dep. 12, 38). Schempp first shared this information with Edwards because Plaintiff was absent. (Burnette dep. 97-98, 100-01; Schempp dep. 20-21).

30. Schempp explained that he and Castleberry would be on-call and, if an after-hours call arose, they might call upon Plaintiff or Edwards, who would have the option to come in and perform the work. (Burnette dep. 101-02, 130; Schempp dep. 79-80, 115-16, 119).

31. During his conversation with Edwards, Schempp also mistakenly advised that Edwards and Plaintiff would be disciplined if they refused to take phone calls after-hours. (Burnette dep. 105; Schempp dep. 21-24, 50, 110-11; Cummings dep. 44-46).

32. Plaintiff first learned of these changes from Edwards, and then spoke with Schempp in-person. (Burnette dep. 97-98, 100-02; Schempp dep. 76-77). He told Schempp that he believed

the changes went against hospital policy, including Schempp's statement to Edwards about discipline for refusing phone calls. (Burnette dep. 101-02).

33. Within a day of these conversations, Cummings advised Schempp that his statement about discipline was incorrect and that Edwards and Plaintiff were not required to answer phone calls after their shift, nor would they be subject to discipline for refusing to take calls. (Cummings dep. 41-44; Schempp dep. 50-51).

34. Schempp immediately informed Plaintiff and Edwards of this error. (Burnette dep. 108; Schempp dep. 50-51, 63-64; Cummings dep. 46). Plaintiff understood that he could not be disciplined for refusing to answer his phone after his shift ended. (Burnette dep. 107-08).

35. Shortly after their respective discussions with Schempp, Plaintiff and Edwards complained to Carrie O'Kray, HR representative, about the elimination of their on-call duties and call pay. (Burnette dep. 68, 108-10). O'Kray advised Edwards and Plaintiff to submit a formal grievance form. (Burnette dep. 110-12).

36. On or about April 16, 2003, Plaintiff and Edwards submitted nearly identical grievances which complained that: (1) the elimination of their on-call duties/call pay was against



hospital policy, (2) Schempp improperly threatened them with discipline, (3) Schempp's position was improperly posted, and (4) Schempp was inexperienced. (Burnette dep. 112-13, Ex. 8).

37. On or about April 21, 2003, Cummings initiated a meeting with Plaintiff, Edwards, Castleberry and Schempp to attempt to resolve some of the tension among them. (Burnette dep. 123; Cummings dep. 37, 163-64). During the meeting, Cummings explained that he wanted to run the Forsyth maintenance department like the Atlanta main campus. (Burnette dep. 133).

38. In addition, the attendees also discussed the hiring of Schempp as the department supervisor. (Burnette dep. 124-25). According to Cummings, Plaintiff and Edwards were extremely upset that Schempp had replaced Castleberry as their supervisor. (Cummings dep. 11-12). They claimed that the position had not been properly posted and that Schempp was not "qualified" to be their supervisor. (Burnette dep. 120-21, 125, Ex. 8).

39. Neither Plaintiff nor Edwards claimed that he should have been hired for the position. (Id.)

40. At the conclusion of the meeting, Cummings agreed to look into whether Schempp's position was properly posted. (Cummings dep. 30-32). Cummings later learned that the job was posted in accordance with Northside policy at the main campus.

(Id.) He told Schempp to pass this information on to Plaintiff and Edwards. (Cummings dep. 54).

41. On or about April 29, 2003, Plaintiff and Edwards met with Sarah Cummings<sup>2</sup> and Teresa Dawson Collier from HR to discuss their grievance. (Burnette dep. 117-18, 123; Cummings dep. Ex. 2). At this meeting, Plaintiff and Edwards discussed their concerns about call pay, the posting of Schempp's position, and what they perceived to be Schempp's poor management style and weak hospital knowledge. (Id.) Thereafter, Ms. Cummings spoke with Schempp. (Schempp dep. 57-60; Cummings dep. 53-54).

42. Based solely upon her conversations with Plaintiff, Edwards, and Schempp, Ms. Cummings made several recommendations. Those recommendations included: that call pay be reinstated for engineers (as a matter of fairness, not due to any legal requirement); that Plaintiff and Edwards report to Larry Castleberry instead of Paul Schempp; and that Schempp attend "leadership training." (Cummings dep. 53, Ex. 2; Aff. Collier ¶4). She did not make any finding that Schempp's position was improperly posted. (Id.)

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<sup>2</sup> Sarah Cummings is no relation to John Cummings.

43. Ms. Cummings' recommendations were not binding on Mr. Cummings, who was not consulted during the investigation. (Cummings dep. 57-60).

44. Sometime between May 2<sup>nd</sup> and 5<sup>th</sup>, Mr. Cummings spoke with Dwight Hill, Vice President, and Bridget Green, HR Director (and Ms. Cummings' supervisor), about Plaintiff's and Edwards' poor attitudes, their grievance, their overt dislike of Schempp, as well as his displeasure at Sarah Cummings' one-sided investigation of Plaintiff's and Edwards' grievances. (Cummings dep. 17-21, 57-60).

45. Ms. Green informed Cummings that he was not required to implement the recommendations issued by Ms. Cummings. (Cummings dep. 59-60).

46. Ms. Green also suggested that a temporary reassignment of Plaintiff and Edwards to the main campus would be a good idea to help ease tensions in the Forsyth department. (Cummings dep. 111-12, 166). Cummings agreed, and he also believed the temporary reassignment would benefit Plaintiff and Edwards insofar as they would be able to observe how the Atlanta maintenance department operated, and Cummings' goal was to operate the Forsyth maintenance department in the same manner as the Atlanta maintenance department. (Id.)

47. The reassignment would involve no change in pay or responsibilities. (Id.)

48. On Friday, May 16, 2003, Mr. Cummings met with Plaintiff and informed him that both he and Edwards would be temporarily reassigned to the Atlanta campus beginning Monday, May 19<sup>th</sup>. In turn, two maintenance employees from the Atlanta campus would be reassigned to Forsyth to handle Plaintiff's and Edward's duties. (Burnette dep. 137).

49. In response, Plaintiff became upset and told Cummings that the reassignment did not "make sense" because Plaintiff had the responsibility to take his child to school. (Burnette dep. 138). Plaintiff did not ask for any delay in the reassignment until after the school year was over--in just two weeks. (Burnette dep. 136-39, 142).

50. Cummings did not speak with Edwards until Monday, May 19<sup>th</sup>, because he was absent on the 16<sup>th</sup>. (Cummings 80).

51. Plaintiff did not report for work on Monday, May 19<sup>th</sup>, as Cummings directed, but instead called in sick, submitting a doctor's note excusing him from work for three days (May 19<sup>th</sup>-May 21<sup>st</sup>) with a return date of Thursday, May 22<sup>nd</sup>. (Burnette dep. 142, 151-52 Ex. 9).

52. Over the weekend and on Monday, May 19<sup>th</sup>, Plaintiff spoke to Schempp and told him he did not want to accept the

reassignment. (Burnette dep. 149-50). In response, Schempp told Plaintiff that if he refused to go, it was likely he would be terminated. (Id.) At that point, Plaintiff admits he made up his mind to disobey Cummings' directive to temporary reassignment. (Burnette dep. 150).

53. On Tuesday, May 20<sup>th</sup>, Plaintiff contacted Ms. Cummings and she advised him to speak to her supervisor, Bridget Green. (Burnette dep. 150-52). Green advised Plaintiff to report to work as instructed, but he did not heed this advice. (Burnette dep. 150-52; Cummings dep. 162).

54. May 21, 2003, Plaintiff faxed a letter to HR, stating that he was not accepting the "transfer" because of the increased travel time, childcare and vehicle expenses. (Burnette dep. 154-58, Ex. 10). Plaintiff copied the letter to Carrie O'Kray, Sarah Cummings, Bridget Green, Lynn Jackson, Paul Schempp, and John Cummings. (Id.)

55. Plaintiff's letter alleged retaliation for his complaints about call pay and the job posting issue. (Id.) Additionally, Plaintiff alleged for the first time that he was being discriminated against because he was over the age of 40 and older than Schempp, and because the call pay policies were not followed. (Id.)

56. Plaintiff admitted that he had never complained of age discrimination prior to his May 21<sup>st</sup> letter. (Burnette dep. 159).

57. Plaintiff conceded that his letter's purpose was not to complain about age discrimination, but to inform Defendant that he was refusing Cummings' temporary reassignment. (Burnette dep. 159, 163).

58. On May 22<sup>nd</sup>, after his doctor's excuse expired, Plaintiff did not report to work. Therefore, with Green's approval, Cummings terminated Plaintiff by telephone that day. (Burnette dep. 162-66; Cummings dep. 6-8, 95-96, 116).

59. Immediately upon learning of his termination, Plaintiff drove to Atlanta to file an EEOC charge. (Burnette dep. 167-68; Ex. 12).


60. After his termination, Plaintiff was temporarily replaced by James Waldrip (under 40), an employee from the main campus, who was originally scheduled only to work at Forsyth during Plaintiff's transfer period. (Hugh Silvers took Cameron Edwards' place for the few months he transferred to the main campus). Northside eventually hired Larry Pendley (over 40) on July 1, 2003 as Plaintiff's permanent replacement. (Schempp dep. 88-90).

61. Cameron Edwards obeyed Cummings' instructions and accepted the temporary reassignment to the main campus about two

weeks later. Edwards also took his child to school, and he asked Cummings to delay the reassignment for two weeks until after the school year ended. (Burnette dep. 160; Cummings dep. 148-51, 156). Cummings readily accommodated Edwards' request. (Cummings dep. 148-49).

62. After working at the main campus for several weeks over the summer, Edwards returned to the Forsyth facility with no loss of pay, position or seniority. (Cummings dep. 127-28; Schempp dep. 61).

Respectfully submitted, this 23<sup>rd</sup> day of March, 2004.

By:   
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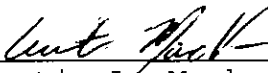
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURNETTE, )  
 )  
Plaintiff, ) CIVIL ACTION  
 ) FILE NO. 1:03-CV-2337-ODE  
v. )  
 )  
NORTHSIDE HOSPITAL, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **DEFENDANT NORTHSIDE HOSPITAL'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** has been served this \_\_\_\_\_ day of March, 2004 by first-class mail, postage prepaid, upon the following:

Larry A. Pankey, Esq.  
Laura Horlock, Esq.  
Miles, McGoff & Moore, LLC  
Suite 400  
4360 Chamblee Dunwoody Road  
Atlanta, Georgia 30341-1055

  
\_\_\_\_\_  
Curtis L. Mack

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

MAR 23 2004

LUTHER... Clerk  
By: *F. Puckett* Deputy Clerk

DOUGLAS BURNETTE, )  
)  
Plaintiff, ) CIVIL ACTION  
) FILE NO. 1:03-CV-2337-ODE  
v. )  
)  
NORTHSIDE HOSPITAL, )  
)  
Defendant. )  
\_\_\_\_\_ )

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief  
complies with the font and size requirements pursuant to  
Local rule 5.1(B) and 7.1(D) (Courier New, 12 pt).

Respectfully submitted, this 23<sup>rd</sup> day of March, 2004.

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	)	FILE NO. 1:03-CV-2337-ODE
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N O T I C E

- - - - -

To: Kathleen Jean Jennings, Esq.  
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March 24, 2004

UNITED STATES DISTRICT COURT  
for the  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Douglas Burnette,

plaintiff

CIVIL ACTION

v.

NO. 1:3-cv-2337-ODE

Northside Hospital, Inc.,

defendant

NOTICE TO RESPOND TO SUMMARY JUDGMENT MOTION

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On 3/23/04, Northside Hospital, Inc.,  
filed a motion for summary judgment in this Court, case document  
number 18.

Pursuant to this Court's order dated April 14, 1987, opposing coun-  
sel is hereby notified that within 20 days from the date said motion was

served, filing of all materials, including any affidavits, depositions, answers to interrogatories, admissions on file and any other relevant materials to be considered in opposition to the motion for summary judgment, is required. Federal Rules of Civil Procedure, Rule 56(c); Moore v. State of Florida, 703 F.2d 516, 519 (11th Cir. 1983).

Unless otherwise stated by the trial court, the Court will take said motion for summary judgment under advisement immediately upon the close of the aforesaid 20 day period. Id. at 519. See also Donaldson v. Clark, 786 F.2d 1570, 1575 (11th Cir. 1986); Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985).

The entry of a summary judgment by the trial court is a final judgment on the claim or claims decided. Finn v. Gunter, 722 F.2d 711, 713 (11th Cir. 1984). Whenever the non-moving party bears the burden of proof at trial on a dispositive issue and the party moving for summary judgment has demonstrated the absence of any genuine issue of fact, the nonmoving party must go beyond the pleadings and must designate, by affidavit or other materials, "... specific facts showing that there is a genuine issue for trial." Federal Rules of Civil Procedure, Rule 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324; 106 S.Ct. 2548, 2552-53; 91 L.Ed.2d 265, 272-3.

Luther D. Thomas, Clerk  
United States District Court  
Northern District of Georgia

Copies to counsel of record

N O T I C E  
- - - - -

To: Curtis L. Mack, Esq.  
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Atlanta, GA 30309-7649

March 24, 2004

UNITED STATES DISTRICT COURT  
for the  
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To: Sonja Faye Bivins, Esq.  
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